

The social mediation of multinational legal education: A case study of the University of London's undergraduate laws programme for external/international students

Submitted By: Vigneswari Thanapal

Department of Law

Queen Mary, University of London

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Abstract:

This thesis examines the social mediation of a transnational educational programme, namely the University of London's International (External) Undergraduate Laws Programme. The thesis explores the lived experiences of a variety of stakeholders – university academics, frontline teaching staff and students - in the context of historical legacy and current development. The University of London's International (External) programmes is one of the oldest forms of distance education, and the Undergraduate Laws Programme is the second largest subscribed programme and represent the fundamental academic legal education for the legal profession in numerous countries. With the separation of teaching, assessment and award as the distinguishing feature consequential to the origins of the University of London its legacy results in multitude stakeholders with vested interests in each aspect. The thesis seeks to understand the motivations behind and implications resulting from the various stakeholders' experiences through an analysis of their narratives gleaned from interviews and data recorded from observations. Is there a distinct identity and culture within each group of stakeholders which has developed through the evolution of the programme? Can a pattern or theory of teaching and learning unique to the programme be identified and if so, what kind of impact has that had on legal education? The possibility of identifying existing and/or emerging communities of practice within and across each group of stakeholders is a recurring theme discussed on the basis that the theory of situated learning within a community of practice is a form of active learning; an objective which the University of London has sought to actively achieve since 2005. By building an ethnography of the various stakeholders, the thesis explores a formerly under researched aspect of undergraduate legal education and acts as a prompt for future areas of research in the areas of legal and distance education.

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Chapter One

The Basis for and Aims of the Research

1.1 Introduction and Research Context

Objectives

This thesis aims to enhance understanding of the features of an increasingly diverse and globalising higher education system, to make apparent through a case study, aspects of social and organisational mediation. The outcomes are directed towards increasing the richness of descriptive/analytical data and to help the enhancement and full recognition of good practice and conversely to identify some, always opaque, problems and difficulties in issues of identity, philosophies and practice of teaching and learning and motivations guided by self actualization and institutional pressures. The thesis also draws parallels between individual concerns identified and situated within the case study and general issues of recent concern within the larger study field of English legal education.

The Subject of the Research: Why the term social mediation?

In 1949 the philosopher Gilbert Ryle (1949) gave the hypothetical example of a “foreigner visiting Oxford or Cambridge for the first time.” He is “shown a number of colleges, libraries, playing fields, museums, scientific departments and administrative offices. He then asks ‘But where is the University? I have seen where the members of the Colleges live, where the Registrar works, where the scientists experiment and the rest. But I have not yet seen the University in which reside and work the members of your University.’ It then has to be explained to him that the University is not another collateral institution, some visible counterpart to the colleges, laboratories and offices which he has seen. The University is just the way in which what he has already seen is organized. When they are seen and when their coordination is understood, the University has been seen.”

For Ryle, this was intended as an example of a “category mistake”: the visitor had mistaken the buildings for the concept: the infrastructure for the institution (Ryle, 1949: 17-18). This appears to be a warning about empiricism, about the object of study being beyond what you can see and you need other organisational strategies to arrange the object. But here at the beginning of this thesis I want to raise the problem of what it is to actually organise the object of study – for, as I hope will become clear, terms such as the University, or the educational Institution, are simply too simple. They fail. Ryle’s visitor may be forgiven on an empirical level: it is difficult to identify, to observe, the key elements of the organisation so that what is seen is indeed the University. Today the items Ryle contained seem somewhat dated – no students appear nor is there any mention of ‘teaching’ or ‘learning’, no students union, no marketing office, no reference to outside bodies such as the Quality Assurance Agency (QAA), Funding Councils and no financial officers. In the case study that makes up this thesis, the problem of capturing the hidden forms of organisation and mediation that give meaning to what can be seen on the surface is especially acute. We are dealing with the institution that was founded to break the grip of Oxford and Cambridge and open up the idea of a

University to very different and diverse sets of organisation: namely, the University of London (henceforth UOL).

This thesis is a case study of one particular aspect of the UOL, namely the Undergraduate programme for Law as offered for external (now termed 'international programme) students (hereinafter ULP). The study draws on historical accounts but consists in the main of participant observation and ethnographical research (mainly semi structured interviews); we nominate a research period for fieldwork but the background is gained by a longer period as the writer was formerly an external student, then a lecturer/tutor in a private, independent teaching institution, then a graduate teaching assistant (GTA) for the programme located in London, which was supplemented by joining the Board of Examiners (see methodology for a full account). The time period during which the fieldwork was conducted was 2008 – 2011 (with some preliminary research drawn from a related MA dissertation by the writer and continuing conversations). It is important to note that while the thesis makes several references to concerns, methods and controversies surrounding the programme as gleaned from interview and observation data, such references are only accurate when viewed in context of the time period of the research fieldwork and the contemporary time period experienced by the researcher and interview subjects from which the quotes are drawn. As the field of legal education responds to contemporary circumstances and the designated research countries are in addition affected by localised conditions which are not static, data which is honest and accurate at the time of fieldwork may subsequently change. Thus, the thesis is presented and should be read in knowledge of this context with the caveat that the thesis represents a study of a programme with a long standing organic history in a situation of constant flux. The data and analysis contained within seek to situate the state of the programme within a contained time period.

Since the preliminary research stemmed from an MA, the basis for that dissertation stemmed from discussions with the then Director of the ULP and his efforts to create and sustain greater engagement between the central administrative body of the UOL External and the independent third party institutions providing tuition support. The project of greater engagement led to considerations within the External Laws team as to the possible issues and concerns which affect not only the UOL External ULP, but also the issues and concerns which may affect the independent third party institutions and the students and awareness of such issues can only be obtained through the experiences of the parties involved. Thus, the thesis can be said to present a snapshot of the programme from that point, till the end of the fieldwork period (2001 – 2011) and is a case study of a decade within a single programme.

A note on context

The title refers to multinational: a more fashionable term is 'transnational higher education' (TNHE) which is sometimes presented as if it was a new, 'international' activity of the education services sector.

TNHE is a growth industry, however, as Naidoo (2009) indicated, understanding the social, political and economic features of its growth is handicapped due to 'a dearth of comprehensive statistics' and a lack of in depth studies of specific 'providers'. Naidoo specifies that 'dating as far back as the mid-1950s, the first offshore education services were provided by US institutions to serve their students on study abroad programs for

US military personnel (Naidoo, 2009: 310; referencing Verbok & Merkley, 2006). It is notable that the UOL – perhaps the first institution to offer ‘offshore’ opportunity – receives no mention. Similarly the Guardian (The Guardian.com/higher education network/blog/2012/jun/21) refers to the rise of ‘global’ students and transnational education, defining ‘global’ as those who seek international education but want to stay local, again as if this was a new occurrence. The Guardian refers to an expanding segment of students, students who have global aspirations that perhaps local institutions could not accommodate but in a new market will find a range of opportunities of education and employment mobility within their own local region. The blog warns that the opportunities for engagement are constrained by the need to ‘understand locals and strategically engage them through innovative transnational education’.

There are centrally entrenched perceptions, which may not fit research and surveys. Consider the Higher Education Policy Institute’s surveys of student classroom experience in 2006, 2007 and 2009, which stated that “the new universities if anything [were] making more provision and in smaller classes than the old, and [were] less likely to use graduate students as teachers” (HEPI, 2009: para. 10). This implies that there was a perception of what university education was and its status but could it be that certain, non-traditional, modes upset that? Where does the UOL stand? TNHE (or offshore education as referred to in Australia and New Zealand) generally refers to educational qualifications being delivered in a different country to the one where the awarding institution is based, in contrast to the traditional international student recruitment market and includes diverse forms of delivery, in particular international branch campuses, joint degrees, double degrees, franchise/licence arrangements with distance learning programmes providing a more ambiguous location. It is notable that the UOL centrally does not engage in branch campuses or franchise/licensing arrangements although individual colleges (for example Queen Mary UOL in Beijing) may be beginning to.

Where does the programme stand analytically? Is it distance education? To situate the programme I will first look in outline at:

- 1) The study of distance education.
- 2) The study of legal education
- 3) The meaning of multinational legal education

A brief literature review demonstrates that while academic literature is plentiful in each of the three identified areas, none of them include any detailed study, nor apply existing theory to the UOL External System (now International Academy) and certainly not to the ULP, now the International Undergraduate Laws Programme)¹. As such, the literature review is not able to critique any directly relevant existing work, but instead

¹ The University of London introduced a name change of the External System in 2011, with the External System renamed as the International Academy. Henceforth, External students would be classed as International students. As far as possible, this is reflected in the research; however, due to the timing when the fieldwork took place, some interviewees may refer to the External system, External students or term the programme colloquially as the External Laws Degree/Programme. These terms may be preserved in the quotation extracts presented.

uses the existing peripherally relevant literature to build a framework and make a case as to the need and originality of the current research.

As a precursor to the literature review, it is worthwhile to describe in brief the history of the UOL. As stated in the preceding paragraph, the examination of the three analytical areas seeks to highlight the gaps in the current literature and show how the case study presents an original and worthwhile addition to current understanding and literature. The terms original and worthwhile are particularly poignant when considering the unique and organic history of the UOL as a higher educational establishment.

While a more comprehensive history of the foundation and growth of the UOL can be found in the Appendix, a short summary will highlight its unique beginnings as the third University in England, the counterculture alternative to the hallowed traditions of Oxford and Cambridge. Since the 12th century, there has existed a measure of university level teaching and learning in London through a variety of avenues. Whilst not in a formally recognised or chartered University, medical and legal professional training was provided through teaching from the professions, in hospitals and the Inns of Court. However, the impetus for the formation of an actual university was brought about by MP Harry Brougham against a background of social change. There was growing unrest among many demographics due to the fact that university education at Oxford and Cambridge were restricted to those who belonged to the Church of England and who could also afford the prohibitive cost of admission and study.

Following Harte (1986:63), Brougham “brought together various interest groups excluded from the universities of Oxford and Cambridge, where it was necessary to belong to the Church of England for entrance to the one and for graduation from the other. The Jews were involved through Sir Isaac Lyon Goldsmith, the Catholics through the Duke of Norfolk, and many nonconformists’ interests through people like Zachary Macaulay and F.A Cox, the wealthy Baptist minister of Hackney. In 1825-26 many meetings both public and private were arranged by Brougham, with the result that by 11 February 1826 it was possible to bring the University of London into formal existence by an elaborate Deed of Settlement”.

The University of London in its original incarnation (Mark I) grew in popularity despite facing opposition and suspicion due to its lack of religious affiliation and attracted competition in 1829 from another college set up in London by Elders from the Church of England (King’s College). King’s College had an edge over the University of London Mark I in that it had been awarded a Charter to award degrees, where the University had not. Attempts by the University of London Mark I to obtain its own charter were met with strong opposition due to self serving religious suspicion. This standoff led to the first example of negotiation and compromise due to circumstance in the growth of the UOL. Royal Charter in 1836 created a body termed as the University of London and this consisted of a governing senate that were empowered to govern the University and confer degrees and persons eminent in the liberal arts and sciences who were designated to act as examiners. The actual teaching of the students was to remain the responsibility of University College London and King’s College, and the students will be permitted to sit for the examinations conducted by the University of London after proving that they have undergone to a satisfactory level a course of study at either institution. This arrangement was termed by Harte (1986) as University of London Mark 2 and was funded by the government.

The UOL in its Mark 2 incarnation was to continue its trajectory of breaking new ground in the mid 19th century by being the first English university to admit women to examinations and later on by being the first to award degrees to women. Further innovation in the accepted norms of university education was also evidenced in 1858 when the university in marked contrast to the residence requirements of Oxford and Cambridge, did away with the requirement of attendance and allowed students to sit for examinations anywhere within the British Empire and its territories. This development may also be termed as a result of organic circumstantial necessity and compromise due to the size of the British Empire at that time and the demand of the number of British citizens in far flung countries for university qualifications.

The admission of students to UOL examinations depended on them having satisfactorily attended a course of study at an approved college. However, the growing numbers of colleges providing such pre examination teaching, the impossibility of ensuring or maintaining consistency in content and teaching within them and the numbers of students in circumstances which precluded attendance at such colleges meant that the UOL was facing increasing demand to allow students immediately into examinations regardless of their mode of preparation. Whilst there was one camp who strongly held the view that residence and tutorial attendance was the cornerstone of the university experience and it is through such residence and attendance and physical involvement that the university education is founded, the prevailing view which led to the abolition of attendance requirements in 1858 believed that residence and attendance in themselves did not demonstrate knowledge and intellect. Rather, knowledge and intellect are evidenced through the outcome of “searching and profound” examinations.

The 1858 decision to separate attendance and examinations did not prove the last word on the matter. Further negotiation arose, again due to organic circumstantial necessity. With the growing popularity for obtaining degrees from the UOL through examinations, there came strong demand for the university to take responsibility for actual teaching. The argument being that a university only concerned with administering examinations and not actual teaching runs the risk of being ignorant of syllabus needs, developments and the practical requirements of students and their vocational needs.

This resulted in the second major compromise in the evolution of the UOL since the first which saw the birth of UOL Mark 2. Based on a key proposal of the 1894 Gresham Commission, the UOL Act 1898 reconstructed the UOL Mark 2 into its currently recognised structure. Logan (1962:13-14) summarises the structure of the reconstituted University as such : “...(it) continued to examine the students without regards to the institution, if any, at which they followed courses of study; such persons were hence forth known as “external” students. The great innovation was that the institutes of higher learning in London to which reference has already been made were brought together under the aegis of the University and given the status of “schools of the University”; their students, when pursuing courses for a degree of the University, became “internal” students. No institution was compelled to become a school of the University. If it cared to apply, it might obtain this status provided that it conceded certain powers to the University. These included the right to inspect and criticise the teaching facilities at the institution and the right, with the consent of the governing

body, to confer the status of “appointed teacher of the University” on the senior teachers of a school”.

This structure was termed University of London Mark 3 (Harte, 1986) and was the first formal recognition given to the External System despite the earlier practice of admitting non attending students to examinations. The External System grew steadily and in fact, again due to organic circumstantial necessity, thrived during the time of World War II where students who were engaged in military operations throughout the British Empire relied on the fact that they could sit for examinations in regulated centres outside of London, and saw that as a means of continuing their education. At the height of the war, the number of external students outnumbered the internal ones. After the war, another sustained growth in registration numbers was recorded, perhaps due to the need of retraining and rebuilding the workforce.

The 1960s to the mid 1980s saw a downturn in the fortunes of the External System due to a number of circumstantial reasons. Firstly, a number of non – UOL colleges obtained degree awarding powers and became universities in their own right, thus affording students the chance at internal university education. These chances further increased when the Council for National Academic Awards was established and empowered to validate degree courses in polytechnics and other private colleges. Further competition was presented in the form of the Open University. Countries in the Commonwealth began breaking away from the Empire and gaining independence and with that began the promotion of their national universities as alternatives to an English University education. While the operations of the External System were reduced during this period, there always remained a core demand and as such, the External System and its myriad of qualifications awarded could never completely cease.

The numbers enrolling into the External System saw an increase in the 1990s and since then numbers have held steady more or less consistently, with a slight growth in most years, especially in the EMFSS and Laws programmes.

The process of negotiation, compromise and reaction carry on. Latest evidence of this lies in the rebranding of the External System into the UOL International Academy. The rebranding exercise took place just outside the time when the main fieldwork for the research data had been completed, but through anecdotal evidence, it is believed that the motivation for the rebranding came from the perception that the term External System was old fashioned and did not accurately reflect the current provision. There had also been some evidence that there had been long standing criticism from current and former students that the term External can be perceived as a pejorative, an outlier from the accepted norm, and may indicate to those unfamiliar with the system to view their awards from the UOL with suspicion as being different or inferior in standard to those awarded to Internal students. Since the UOL by statute makes no distinctions in the standards and conditions by which degrees are obtained, the demarcation of external and internal draws distinctions where in reality there are none.

Thus, by rebranding the UOL External System as the UOL International Academy, students are simply viewed as studying locally or internationally. Perhaps as a demonstration of how, yet again, organic growth prompted by circumstantial demand and conditions will inevitably lead to an imperfect compromise, the term International Academy and subsequently International students may leave some students outside the box of this neat terminology. As highlighted by the current Director of the ULP,

students in England who are reading for the ULP can hardly be said to be international students, especially in the case of students obtaining tuition support from the further education arm of Birkbeck College, itself one of the constituent colleges of the UOL Laws Consortium.

Born not through deliberate design, but instead through circumstance and the recognition of an existing need and lack of suitable provision, the foundation of the UOL and its subsequent development holds some parallels to the situational context of the case study. In a similar manner, the emergence of independent third party institutions providing tuition support for students on the ULP was precipitated by recognition of need, demand and lack of suitable provision. The growth of such institutions and their emerging and developing relationships with the UOL demonstrate the existence of organic, ad hoc, occasionally semi formal and sanctioned relationships and co-operation.

The development and evolution of the UOL during the 19th century evidences a measure of uncertainty and disagreement over the proper role and purpose the University should adopt. Final decisions on the proper place the University should occupy in the realm of English higher education, as well the processes by which degrees should be awarded came about through a series of negotiations and compromises. Likewise, through the thesis, it will become evident that agreement over the role and objectives of the ULP and the processes used to achieve those ideals are the subject of some uncertainty and disagreement between the UOL, independent third party institutions and the students. These issues are in a constant state of negotiation and compromise, whether through direct discussion between the stakeholders identified, or more subtly through conscious or unconscious activity.

Finally, further parallels can also be identified from the fact that the UOL, despite being a highly identifiable, individualistic organisation, has demonstrated throughout the years that it is in a constant state of evolution and it has had to respond to changes in social, cultural, educational and international mores. As a single organisation it stands, seemingly unchanged, an identifiable landmark in London's history and romanticised as the one constant in a city of chaos (Wyndham, 1951). However, the changes in workings, processes, influences and regulations affecting the UOL has ensured that an observer seeking to understand it would only be able to do so in context within a specified moment in time. Similarly, the ULP and its relationships with the independent third party institutions and students are constantly subject to changes caused by developments in English and local legal education, educational regulatory requirements and social, cultural and commercial pressures.

While the existence and contributions of independent third party institutions have been accepted as a given by the UOL and students reading for the ULP in most major markets, the workings, processes, objectives and role of such institutions, vis a vis the UOL and the students are also in a state of constant evolution, thus, as stated previously, any attempt to paint a coherent and constant picture through the narrative can only be taken in the context of the decade of observation (2001-2011).

1.2 The Study of Distance Education

According to Cross (1973), there is no single definition of what constitutes distance education (hereinafter DL). Education is a vague term and can be used to refer to the process of pupils attending a course of instruction at a traditionally recognised institution of learning as well as being used to refer to any form of organic experience which increases human development and understanding. Cross (1973) states that DL is a form of non traditional study, which is defined by the Commission of Non-Traditional Study as being “an attitude that puts the student first and the institution second, concentrates more on the former’s needs than the latter’s convenience, encourages diversity of individual opportunity, and de-emphasises time and space and even course requirements in favour of competence, and where applicable, performance” (Commission of Non –Traditional Study, 1973).

As such, it is recognised that non-traditional study can take place in a variety of forms under a myriad of circumstances with differing standards to ascertain success. Thus, it is necessary that DL is given a more defined scope. Following Cross (1973), in the context of obtaining a degree qualification by DL, the distinguishing factor lies in the fact that in DL, the student must meet the standards of an institution which has the power to award a formal qualification recognising the course of education. The requirement of the presence of an institution, which prescribes a basic course structure, is also present in Holmberg’s (1977:9) definition where he states: “The term ‘distance education’ covers various forms of study at all levels which are not under the continuous, immediate supervision of tutors present with their students in lecture rooms or on the same premises, but which, nevertheless, benefit from the planning, guidance and tuition of a tutorial organisation”.

Moore (1973:664) however, defines DL as being “the family of instructional methods in which the teaching behaviours are executed apart from the learning behaviours, including those that in a contiguous situation would be performed in the learner’s presence, so that communication between the teacher and the learner must be facilitated by print, electronic, mechanical and other devices”. Thus, Moore’s (1973) definition envisions that the instruction is physically separated from the students and any communication is via non face to face mediums.

Keegan (1980) considers that Peters, the foremost theorist on DL, forms his basic precepts using principles derived from the hallmarks of industrialisation. In the early 1970s Peters (1971:225) stated that non-educational concepts were best to use: “Correspondence instruction (usually regarded as the early form of DL) is the most industrialised form of instruction, and the usual theoretical criteria for the description of traditional instruction do not help very much in analysing correspondence instruction. (This) has suggested the introduction of new categories taken from those sciences investigating the industrial production process. It is, in fact, astounding to see how much better these criteria help to understand and describe the institutional process in correspondence instruction. Some of the suggested criteria are: division of labour (on the side of the teachers);mechanisation; automation; application of organisational principles; scientific control; objectivity of teaching behaviours; mass production; concentration and centralisation”.

Keegan (1980) sought to form a comprehensive definition based on six factors:

1. Separation of teacher and student
2. Influence of an educational organisation, especially in the planning and preparation of learning materials
3. Use of technical media
4. Provision of two way communication
5. Possibility of occasional seminars
6. Participation in the most industrialised form of education

Following Keegan (1980) distance education is represented by a process/institution necessarily preoccupied in the division of labour and ensuring productivity and smooth scheduling, primarily in the aspects of:

- Planning and preparing learning materials
- Deciding and executing the appropriate form of communication between teacher and student
- Assessment of student performance
- Administrative issues such as lead times, deadlines, print runs, typefaces, warehousing, delivery, dispatch and record keeping.

In order to ensure the smooth functioning of the industrialised institution, the end product, i.e. the educational package provided to the students, is necessarily one which is “consistent with a Fordist model of organisation in which mass produced items are made available to a mass market” (Edwards, 1995:242). In a Fordist model, the producer is of primary importance in the market. The product is deemed to be of value in the market precisely because it is produced by a particular institution.

What are the implications for situating the ULP within Distance Education?

Trying to fit the ULP under a model of distance education is difficult due to confusing and sometimes conflicting terminology associated with the field and the unique structure of the programme. In the USA, the external degree is characterised as a programme that exhibits three conditions:

1. The principal location of the learning location is off campus
2. Degree credit is awarded at associate, bachelors or graduate degree level
3. The programme is designed for non-traditional learners (housewives and working adults, people beyond commuting distance, independent learners, special occupation groups etc) (Cross, 1973:419-420)

Sosdian and Sharp(1977:1) quoting the US Department of Health, Education and Welfare (1978) defined the external degree as “a degree programme which can be completed in the following manner: a student entering the programme with the minimum entrance qualification can complete it with less than 25% of the required work taking the form of campus based classroom instruction”. Using the American definition, the external degree cannot be squarely placed within the definition of distance education for the following reasons. Firstly, while the American definition agrees that the principal learning environment is off campus, there is a minimum expectation of traditional campus attendance and activity. Secondly, if credit is given for learning experiences obtained outside the boundaries and sponsorship of the institution, then

the planning and content of that learning is not influenced and controlled by the institution as required in Keegan's (1980) definition.

Keegan (1980) acknowledges this distinction but recognises that the term external degree may be used in relation to programmes which do relate to the six factors outlined in his definition. He states: "In so far as the external degree serves to describe programmes whose primary function is to recognise education and attribute to it an appropriate qualification, it does not fall within the concept of distance education... If, on the other hand, it is used to describe programmes whose function is to provide education for students, then it may be identified with distance education providing it agrees with the descriptors given" (Keegan, 1980).

At this point, it must be noted that UOL never did award external degrees as claimed in popular lay parlance. All degrees are awarded under the auspices of the UOL and can be gained either by internal or external study. An evolutionary tracing of the UOL's degrees by external study shows that as initially conceived, they would fall within the American definition of external degrees. But their current operation would fall within the definition of distance education as espoused by Keegan (1980).

The UOL was established by Royal Charter in 1836, bringing together University College London and King's College London and founded with an operation principle of separating teaching from examining. The UOL currently consists of 19 self governing colleges and the Institutes of Advanced Study. The Royal Charter of 1836 laid the foundation for breaking conventional university tradition maintained by Oxbridge by declaring "that the University would hold forth to all classes and denominations... without any distinction whatsoever, an encouragement for pursuing a regular and liberal course of education" (Jones and Letters, 2008). This broke barriers of class, religion and gender maintained by the relatively anachronistic institutions of Oxbridge and enabled women and others of diverse non Church of England backgrounds to obtain degrees. This commitment of opening university level education for those traditionally excluded was strengthened in another charter in 1858 which allowed students who were unable to physically attend at the UOL colleges to obtain degrees if they were able to meet standards as determined by the university. The 1858 Charter provides at Clause 36 that:

"We do further will and ordain, That persons not educated in any of the said institutions connected with the said University shall be admitted as candidates for matriculation, and for any of the degrees hereby authorised to be conferred by the said University of London, other than medical degrees, on such conditions as the said Chancellor, Vice Chancellor and Fellows, by the regulations in that behalf shall from time to time determine, such regulations being subject to the provisos and restrictions herein contained".

This clause extended the entrance criteria for the examinations and allowed not only students of institutions in the British Empire, but also individual candidates from around the world to sit for them.

The groundwork for the 1858 Charter was laid by Messrs. George Grote and Henry Warburton in a report in 1857. They put forward that UOL examinations should be open to all who met the entrance criteria. They believed that the university senate operating as an umbrella body was not able to micro manage the content and quality of teaching

in individual colleges. As such, an insistence on physical attendance had no bearing on the Senate's ability to determine whether an individual candidate had received the adequate preparation to sit the examinations. The only way to determine the level of the student's knowledge was for them to undergo appropriate examinations (Jones and Letters, 2008). Thus, they recommended that since the Senate of UOL "neither teaches, nor supervises, nor maintains discipline, nor exercises authority over students", it should confine itself to being an examining body and award degrees on successful completion of examinations regardless of the method of an individual candidate's form of preparation.

The 1857 report by Grote and Warburton incorporated the views of other strong proponents such as Sir Buckhill, a fellow of University College London. In his letter of support, he stated that defining a regular and liberal education only as that received "in an academy, college, or a collection of lecture rooms" was narrow minded (Jones and Letters, 2008). His interpretation of a regular and liberal education was "an education of all the mental faculties, by means of a wide and liberal range of study, however pursued, or however obtained. Searching and profound examinations, like that of the UOL, cannot be undergone successfully unless by men who have assimilated knowledge, and whose intellects have become vigorous by years of discipline. They render the college test superfluous".

His views echoed those of Dr. Robert Barnes, a leading member of the Committee of Graduates who organised a petition for opening up the examinations to non collegiate candidates (Jones and Letters, 2008). Besides stating that an insistence on college attendance when the University was unable to maintain uniform control on the individual colleges was unfeasible, more importantly, he emphasised that acquiring knowledge through independent or distance study did not necessarily diminish the qualities and abilities of the candidate (Jones and Letters, 2008). Barnes stated: "The young man, who presents himself for examination in the confidence of knowledge acquired by dint of self denial and self reliance, brings the strongest presumptive evidence of intellectual and moral culture... knowledge alone must be tested. There is no substitute for it. The University and the public are not concerned to inquire when or where it was obtained... unlike mere worldly stores, knowledge can hardly be acquired dishonestly, or without elevating the character of him who has achieved it".

The emphasis on education being the recognition accorded to knowledge and skills acquired through means other than teaching provided by an educational institution would accord with the American definition of an external degree and thus fall outside the definition posited by Keegan (1980). As such, the original degree by external study of the UOL was not a form of distance education.

The UOL as an examining and degree awarding body for both collegiate and non collegiate candidates continued for the next forty years, the last twenty of which saw growing acrimony and tension between two camps. On the one hand, there were those who were extremely sceptical of the methods non collegiate students used in preparing for the examinations and argued that such methods were no substitute for the all round character building experience provided by attendance at a college. This camp advocated that the University's role was also to provide social education instead of merely recognising the acquisition of the technicalities of an academic subject. This led to repeated calls for the UOL to evolve from a sole examination authority to a faculty led teaching university catering to resident Londoners (Jones and Letters, 2008).

The Convocation – the body which had been established to represent London graduates in the 1858 Charter and which had a large representation on the Senate – was however central to the University’s decision making in all this period: “Many of the members of the Convocation had gained their degrees through the private route or through study at provincial and overseas colleges and wanted to defend the existing system” (Jones and Letters, 2008:193). This view was supported by the British government who wanted the UOL to effectively continue in its imperial role as the “mother” University of the British Empire.

Those who were against the open examination system were undoubtedly vocal, however, what was “arguably London’s most important contribution to higher education: the external system” (Twining, 1987) never ceased operation. A compromise was reached and implemented via the University of London Act 1898. “The new University established by it and the subsequent statutes had dual character. The Internal side was to consist of the twenty three schools admitted to the University in 1900... plus teachers who were to be recognised by the University in some other London institutions. All other students who took the University’s degrees were to be classified as External” (Jones and Letters, 2008:193). The Internal side was administered by an Academic Council and the External side by the External Council. The 1898 Act also expressed in statute 122 that degrees taken by Internal and External students were equivalent. It was after this Act that the evolution of the degree taken by external students has now come to exhibit the characteristics of distance education as defined by Keegan (1980) and subsequently described below.

The separation of teacher, student and assessment as the core aspect in the organisation of the “external” educational experience

The academic content of degrees obtained by external study was based on the same syllabus as those for internal students until the mid 1960s. This period saw the UOL colleges becoming individualised and starting to develop their own syllabi “based on the special interests of their teachers and often involved the use of materials which were not readily available to External students” (Jones and Letters, 2008:198). The Internal and External systems drew up a memorandum reinterpreting Statute 130 which “made it possible for colleges to have their own individual syllabus, exams and entrance requirements for their internal students, while syllabus could be devised for External students which demanded an equal standard of achievement in the final assessment but also took into account the facilities and resources generally available to External students” (Jones and Letters, 2008:198-201).

At the end of the twentieth century the External System had a central administrative core termed EISA (External and Internal Student Administration) which contracts with individual colleges (and for the ULP in particular, a consortium of six colleges) who are “responsible for planning the structure and content of programmes, developing and writing study materials; setting the examination papers and marking scripts; determining the academic progression of students, advising and assisting students, and in some cases, providing tutor support” (Jones and Letters, 2008:203). Thus, while the individual colleges serve as the educational organisations that provide the academic influence, the actual academics that create the courses are separated from the end learners and the relevant academic messages have to pass through indirect means.

Mediation through development of technical media

True to their initial position as solely an examining body, the UOL did not provide any form of academic support for external students other than publication of previous examination papers. Basic guidance started to be provided in 1925 with the creation of an advisory service for external students; however, guidance was very basic and limited to a list of recommended reading. "The service was later amplified to give commentaries on the books mentioned, to provide special introductory notes co-ordinating all the subjects necessary for any particular exam and to offer study schemes which might extend to ten pages for an intermediate course, and for an Honours degree up to twenty pages of condensed expert guidance" (Jones and Letters, 2008:177). Fees were low. The 1990s and 2000s saw a diversity of support grow up depending on each programme. In the case of the LLB, support for external students increased tremendously from 1999 and there was a corresponding increase in fees (it is still possible to gain the LLB for a total outlay of less than £4,000 in fees paid to UOL across the period of study). Most of the support is provided via print media in the form of comprehensive subject guides, provision of essential course textbooks and general guides on research and study skills. Computer based media began to be used in the early 2000s putting up examination papers and examiners' reports online, investment in a Virtual Learning Environment (VLE, Moodle) and purchasing programme specific subscription access to online academic research and law report databases.

Provisions for two way communication between institution and student regarding academic questions and the possibility of occasional seminars

Baath (1981) emphasised that physical attendance at seminars conducted by the institution was "diametrically opposite" to distance education. Thus physical attendance is not an essential constituent of distance education but can be used to supplement it.

In their history of the External System, Jones and Letters (2008) touch on a central issue for the system: from its inception there was an arena of student support and teaching conducted by various means (from individual tutors to institutions [sometimes in a 'special relationship' and which often became Universities in their own right] which was beyond the direct purview of UOL. For much of its history the main communication between UOL and its external students was through the regulations and the examination process. The Advisory Service came to organise some study sessions which were available to external students in London and in the 1980s some support was extended to other countries with large numbers of UOL external students by small teams of UOL academic staff visiting and conducting 'revision sessions'. Independent commercial tutorial organisations offering teaching support for the UOL External students occasionally invite UOL academics to conduct special seminars for their customers. Such face to face sessions provided some opportunity for some students to ask questions and engage in discussion with UOL academics but raised issues of equality of provision and it was felt that greater communication should be provided by the UOL increasingly "via the University's emerging e-campus" (Jones and Letters, 2008).

The UOL as an industrialised form of education

Peters' criteria emphasised distance education as characterised by elements of industrialisation such as division of labour, mechanisation, application of organisational principles, the objectivity of teaching behaviour, mass production, concentration and centralisation. These elements enabled the UOL degrees by external study to survive. By the 1990s UOL had evolved into a rump central body with independent self governing colleges and institutions in terms of academic matters, although there remained an overlap in EISA which combined some remaining internal student administrative functions for inter-college programmes of study (such as the intercollegiate LLM, but such programmes largely ceased in the early 2000s) and organised non-college specific Examinations. In the case of external provision academic matters were governed by the individual colleges in charge of the particular degree, or in the case of laws, a consortium of colleges, while administrative matters are governed by EISA. Materials and learning activities and objectives for external students were standardised and mass produced and distributed according to subject (in the case of first year subjects for the LLB for example a print run of a subject guide could be 15,000 copies, designed to cover 3 year's supply). Any pedagogical considerations must necessarily be generalised. As of the academic year of 2007/2008, there were 45,000 registered external students reading for 120 different awards, by 2010 it was over 50,000. The UOL had 650 examination centres in 84 countries, which had required "the development of a full scale international examination operation, involving negotiations with governments worldwide for permission to organise exams...and including the creation of a complete exams infrastructure in North America" (Jones and Letters, 2008:208). "The rise in student numbers and the increase in fees, combined with the existence of a centrally managed supporting administrative infrastructure, provided significant economies of scale" (Jones and Letters, 2008:203) making the UOL one of the largest distance education schemes in the world.

Peters defines the core pedagogical concept of distance education as that of autonomous learning, where the student is self determined and self directed and able to "recognise their learning needs, formulate learning objectives, select contents, draw up learning strategies, procure teaching materials and media, identify additional human and physical resources and make use of them, and themselves organise, control, inspect and evaluate their learning" (Peters, 2001:48). Peters (2001) identified a classic "examination preparation" model as perhaps the most extreme form of autonomous learning and stated: "This model is obviously not the result of pedagogical considerations that have student emancipation as their objective but is simply the result of necessity. It is used where the social status and external circumstances of the applicants, or the lack of a university, do not permit regular studies... (it) serves as proof that it is possible for students to be successful without academic teachers, mentors and counsellors, and as verification of the possibility of studies that are to a great extent self planned and for which the student is responsible" (Peters, 2001:93). He went on to note that: "It has the advantage that it can look back on 150 years of practice in the UOL".

The drawback of the 'examination preparation' model Peters states is that it takes the form of non-integrated distance education; it is organised by a separate department outside of the university structure and as such "lacks the academic reputation and

weight and powers of the classical faculties or departments... (and is) detrimental to the healthy development of distance education" (Peters and Keegan, 1994:48).

Peters is thus somewhat dismissive of UOL, certainly he appears unwilling to include it within his models of distance learning proper. But reading his 2001 text it is clear that he has severely misunderstood the structure and scope of the UOL degree by external study as it then was. He seemed unaware of its development or of the changing relationships between central administrative body and academic direction as provided by the (lead) colleges. His characterization of an examination preparation model only is no longer apt and he seems to downplay the emancipatory ideal and desire to provide educational opportunity that was always inherent in the provision. However, his misunderstanding may be a reflection of the relatively low profile the UOL external system had in DL circles which seemed to look to the Open University as the example of DL operation in the UK (his 2001 text only contains three references to UOL, while references to the Open University are very frequent with chapter seven having an extensive discussion of 'The great ideal: the Open University in the UK'. It is, however, as will be clear in a later section on identity, not easy to simply fit the UOL operation into established categories of DL. But the earlier tracing of the evolution of the external programme has shown the degree of integration it has with the internal faculties of the University with regards to academic guidance. In particular, the LLB by external/(now 'International') study has academic guidance from a committee comprised of legal academics from all six colleges having law schools, a dedicated core academic team headed by an Academic Director and a dedicated administrative office including distance learning on-line specialists. Moreover, recognising the need to raise the academic profile of the central administrative body in 2007, an academic Dean was appointed "to provide academic leadership and develop further the dialogue and partnership between colleges and administration" (Jones and Letters, 2008:208), and those authors commented that "the External system benefits from an integrated approach to quality assurance in which the colleges and University share responsibility for the quality assurance of their External provision" (Jones and Letters, 2008:203).

1.3 The study of legal education

What of the literature and issues arising in the field of legal education? Again although the programme is a provider (or at least awards the qualification) of legal education to numbers far larger than any individual university or college's internal residential faculty, its motivations, operations and contributions to legal education have never been the subject of any detailed scrutiny or research.

Legal education is now subject to considerable reflection: however much of this is recent and a division is apparent between those who see it as 'preparation for joining the legal profession' and those who see it as part of a 'liberal' academic education.

In this thesis legal education is used to refer to "that part of the institutionalised discipline of law that is concerned with the dissemination of knowledge and critical understanding...of its subject matters and operations" (Twining, 2002:102), and is confined to that which is provided by a university at an undergraduate level. The issues which arise and any applicable theory relating to such dissemination will necessarily differ across systems due to differing individual needs and objectives (Twining, 1997).

Since law as an individual field of academic study was termed by Twining (1994) as a “latecomer” to English universities, then legal education as a field of academic research and study can surely be termed as a very recent subject. Although the issue of the actual teaching of law was raised as far back as 1883 when Dicey famously asked in the title of his inaugural lecture as Vinerian professor at Oxford University: “Can English law be taught at universities?”, substantive theoretical analysis in the teaching of law is neglected in favour of research and publication of substantive legal academia (Becher and Kogan, 1992). The battle for limited funding is such that universities have to ensure that individual faculties are working hard to generate groundbreaking research ideas and findings. The emphasis on research means that those who are the most influential members of the academic peer group within a faculty may not regard teaching as a serious intellectual task (Cownie, 2000). Clark (1987) raises the irony that although academics provide the first point of guidance for future practitioners in the field, and the material and ideas they disseminate will consequently shape the development of the field and affect the lives of the general public in many aspects, yet academics themselves are the subject of very little study even while jurists such as Dicey (1883) and Twining (1994) have emphasised the need for legal education to be conducted as an autonomous enterprise by professionals who are separate from the practicing profession (an enterprise examined in critical fashion by Goodrich, 1996).

Today, the place of the law faculty within the university academy is cemented by the fact that an undergraduate degree in law represents the first and most straightforward step in joining the legal profession in England and Wales and most common law countries (while the USA have, since the 1960s instituted a post graduate qualification). Yet, Mackie (1990:131) argues that this present position is a result of “reliance on the pragmatism of evolution”, instead of being based on the results of serious and coherent strategic research.

This view was shared by Fitzgerald (1993) who identified only two pieces of national research in English legal education conducted in the past three decades: the Ormrod Report in 1971 and the Report of the Marre Committee in 1988. In 1996, the Lord Chancellor’s Advisory Committee on Legal Education and Conduct (ACLEC) was released and sought to redefine the relationship between academic and professional legal education. Going through these three major reports in chronological order, it is possible to say that the focus on legal education in England has shifted from a heavy emphasis on substantive content to placing high value on the abilities which a student should acquire and be able to demonstrate as a result of their course of study. This shift in emphasis is not confined to legal education alone. Barr and Tagg (1995) stated that university education on the whole was affected by a paradigm shift beginning in the late 1980s which saw a move away from an “instruction paradigm” which focused on the delivery of information in the traditional lecture format to a “learning paradigm” which focused on learning outcomes.

The Marre Report in 1988 saw the start of this shift by identifying a need for undergraduate legal education to be better able to develop the intellectual, analytical, writing, oral communication and research skills of the students. This theme was refined and implemented by policy makers following the ACLEC report which stated that while “the degree course should stand as an independent liberal education in the discipline of the law” and that law schools should be able to decide their own curriculum, “a degree should be recognised as a qualifying law degree provided the following requirements

were are satisfied: The degree is satisfactory to the authorised body with regard to the acquisition of general intellectual skills, the analytical and conceptual skills required by lawyers, proper knowledge of the general principles , nature and development of law and contexts in which it operate, and of the legal values and ethical standards” (ACLEC First Report, 1996). The authorised body referred to here is now the Joint Academic Stage Board (JASB), which details the minimum requirements for a qualifying law degree utilising the QAA Laws Benchmark and the Joint Statement of the Legal Professions.

Watts (2006) implies that the most significant development in the field of legal education is the advent of “pedagogy”. Barrett, somewhat against then conventional wisdom, stated that the late 1960s onwards was a “period of considerable development and academic freedom: a period in which there was both a very great expansion in the provision of undergraduate courses, and a great involvement of law teachers both in the development of curricula and in discussion as to the proper methods for their discipline” (Barrett, 1990:4). Barrett (1990) points towards the creation of the Association of Law Teachers as evidence of the growing recognition of the importance of legal education pedagogy and claimed that there was a “surfeit of literature” (Barrett, 1990:5). Bradney (1997) in his article “The Rise and Rise of Legal Education” illustrates the growing improvement in the scholarship and writings on legal education, ranging from aspects of philosophy, character and methodology. Sherr and Sugarman (2000) pointed to recent growth in the literature concerning methodology of how to teach legal skills (reiterating the tone and direction of national research and policy).

There was however, concern that this recent focus on skills may be shifting undergraduate legal education away from an academic to a vocational type education. Bradney (2003) states that although none of the reports from Ormrod in 1971 to ACLEC in 1996 sought to fundamentally alter the intrinsic nature of English university law schools, they have nevertheless introduced an “atmosphere of appraisal” (Bradney, 2003:20). Webb (1999) justifies this shift as inevitable due to post Fordism in education where “learning emphasises the extent to which notions of education and training are to be harnessed to the demands of the post industrial economy. In essence, the argument is a simple one: employers need workers with adaptive technological skills (and attitudes) required for a flexible working environment; it is the function of the education system to provide them” (Webb, 1999:237). In order for graduates to be considered employable in a post Fordist economy, universities must adopt “a more utilitarian approach to education and a greater emphasis on what Lyotard (1993) calls performativity” (Webb, 1999:238). The current fashion of legal skills in the past decade illustrates the post Fordist need for diverse practical skills rather than doctrinal knowledge.

The tension in the field of legal education was highlighted by MacFarlane (1992) in the following paragraph:

“Concerns over the increased emphasis on skills have produced strange bedfellows. Suspicion that skills education is a ‘soft’ option is apparent in the reaction from teachers from both sides of the vocational divide and is expressed, in different forms, by law teachers from two very different camps: those who place great importance on the substantive coverage and those from the ‘radical’ end of law teaching who are concerned that a practical focus might fail to question and critique the entrenched values of law and layering. Some academics are concerned that in concentrating upon

so called 'professional' skills, skills education in law will fail to challenge the legitimacy of the status quo of legal professionalism, that is, it will be even less successful than the academic model in 'radicalizing' student thinking and transforming behaviours. Still other law teachers (largely those in the undergraduate schools) see demands for skills education as a throwback to earlier appeals for trade school training for lawyers based in the universities, appeals which have traditionally been resisted as a blurring of the 'proper' role of the university law school" (MacFarlane, 1992:296).

What should be the proper role of a university law school has also produced plentiful discussion. Bradney (2003) strongly maintains that the role of the university law school is to provide a liberal education for its students and he broadly defines a liberal education as one where a student pursues and acquires knowledge purely for its own sake and where that knowledge forms part of his intrinsic being and illuminates his view on life. Bradney (2003:39) quotes Newman (1960:85) in describing knowledge as: "something intellectual, something which grasps what it perceives through the senses; something which takes a view of things; which sees more than the senses convey; which reasons upon what it sees, and while it sees; which invests it with an idea...such knowledge is not mere extrinsic or accidental advantage...which we can command or communicate at our pleasure, which we can borrow for the occasion, carry about in our hand, and take into the market; it is acquired illumination, it is habit, a personal possession, and an inward endowment." Following this line of thought, the post Fordist demands that a university imparts skills attractive to the employment market, or that a university is able to teach a student and make a professional out of him, would be to cheapen it and describe its role in extremely shallow and vulgar terms. Bradney (2003) does not disagree that vocational skills have a valid part to play in university education, but they should not be the primary role of the university, but instead should be viewed as helpful accessories that benefit the student in the pursuit and acquisition of knowledge and thus consequently in any chosen vocation.

This issue was also earlier considered by Twining (1967) where he stated that how to "reconcile the liberal tradition with the demands of the world of affairs is one of the perennial problems of university education. Possibly of all university subjects, law faces the basic dilemma in its most acute form. Other professional subjects such as medicine and engineering seem to an outsider to have been relatively uninhibited in their response to vocational pressures, perhaps because they have been relatively isolated from the liberal arts tradition." By contrast the literature of legal education "shows an almost pathological concern with trying to please our colleagues in the arts faculties and our brethren in the legal profession at the same time" (Twining, 1967:899).

Webb (1999) recognises that classic liberal education for knowledge as defined by Newman in the nineteenth century is an anachronism in modern society and posits a current and practical definition of liberal education as the proper role of the university where education "has both its own intrinsic merit and a practical and economic value, of combining commitment to intellectual excellence with widening access to higher learning, of transmitting a shared culture while upholding ideals of cultural diversity" (Webb, 1999:247). Bradney (2003) tentatively agrees with this view but raises practical concerns about whether the university is able to achieve synergy between the dual commitments and whether they have sufficient resources to do so.

Situating the ULP in Legal Education

The success of the UOL international programme is largely due to the great numbers registered in numerous countries for the two main programmes – the LLB and the economics/sociology offering (EMFSS, Lead college the LSE), out of which Laws is the most popular with approximately 16500 registered students in 2013, far exceeding the total studying at the six laws schools combined (Appendix). The undergraduate laws programme for external students is administered by EISA (now since 2011 termed the International Academy) and academic direction is governed by the Laws consortium consisting of the laws faculties of the six colleges: Birkbeck, King's College London, London School of Economics, Queen Mary College, School of Oriental and African Studies and University College London. Its central academic team operating full Time in EISA (now International Academy) consists of only four full time staff but draws upon over 150 academics as committee members, writers, occasional lecturers and examiners.

Twining noted that “at least three very different categories of students avail themselves of the opportunities offered by the external LL.B (a) well qualified people, often graduates, seeking to advance already established careers, or change career, or more generally to pursue an academic interest in the law; (b) educationally disadvantaged people, often with minimum qualifications, who see the degree (based, as it is, on the principles of open entry and freedom in respect of method of study) as providing opportunities denied by conventional institutions; (c) school leavers, in several countries in the Far East and Africa, who have been unable to obtain a university place in their own country” (Twining, 1987). While the balance of students' residence has shifted with only a minority now resident in the UK the three categories still represent a guide to the categorisation.

The UOL LL.B obtained through the External System/International Programme was always recognised as a qualifying law degree in England and Wales (in given conditions were met, such as length of study and now including EU Law and skills portfolio), as well as in several other countries, mainly in the former Commonwealth. Graduates may go on to sit for professional examinations and become members of the legal profession. Others use the knowledge gleaned from their study in other professions. The international recognition enjoyed by the UOL LL.B serves as evidence of its academic pedigree. The examinations are of a standard, which regulatory bodies governing the legal profession in many countries, regards as a satisfactory, impartial test of legal knowledge. The external student does not need to demonstrate that he has actually undergone a course of instruction provided by the University. As such, what is known of the circumstances under which they have obtained their legal knowledge and what are the relevant or perhaps unique pedagogical issues that arise from this mode of legal education?

The earlier discussion on the literature on English legal education focuses on legal education within the traditional university setting, i.e. internal students in physical attendance of a prescribed course, perhaps in residence on campus. The evolution of English legal education for internal students has been well documented with a plethora of academic writing but can the same research be applied to the ULP? Thus the research asks what are the philosophical objectives of this particular degree? How have the academic contents and requirements changed throughout its existence? What

are the considerations (pedagogical or otherwise) involved when the academics are preparing the syllabus, assessment or media for student guidance?

Another important factor in this particular form of legal education is the significant role played by independent third party institutions. Such institutions are (largely) privately owned and operated commercial enterprises, independent of the UOL, but targeting the custom of students reading externally for UOL degrees. Some institutions provided preparatory courses only for the Laws degree while others provide support for a variety of external programmes. Such institutions are especially prevalent in countries with large numbers of UOL external students. The UOL has no control over the local teaching provided by these institutions and traditionally offered no formal recognition or relationship with any third party institution (a limited recognition system was introduced in c. 2008). The teaching support provided ranges from short courses to continuous lectures and tutorial classes for students who are of traditional university age, for example, in Malaysia, Bangladesh and Sri Lanka, where the provision of UOL degrees by external study provides an alternative to local university education.

No definite figures exist but anecdotal evidence and liaison with local British councils suggest that approximately 75 – 80% of external students reading for the UOL LLB obtain some tuition support from a third party institution, either attending physically on a constant or part time basis or via correspondence. The faculty profile of such institutions also varies, some rely solely on privately contracted services of academics who teach in universities in the UK (as the programme offered through SPACE of Hong Kong University), some on a team of full time faculty specialising in teaching English Law according to the UOL ULP syllabus and some utilise adjunct faculty who may be practitioners or academics from local universities.

There exists therefore, a large group of individuals who are actively teaching English law but whose experience and methods are not recognised in the literature as part of English legal education or the legal academic profession. Yet these persons have the primary responsibility of aiding a large number of students to obtain an internationally recognised qualifying law degree and as such, are in fact, often providing first stage legal education for future members of the legal profession in numerous countries. Both the current and former Director of the ULP state that the system is committed to greater administrative and academic co-operation and liaison with third party institutions but acknowledge that their role traditionally sat outside the official recognition and operation of the university's system. Thus, the actual teaching provided to the majority of the external students of this programme occurs in a physical location ambiguously perceived and minimally governed by the awarding institution. Likewise, the learning experience of the students on both levels – one, their relationship, perception and experience of the University and academic guidance and materials provided and the other, their relationship, perception and experience with their supporting institution, has not been subject to scrutiny.

Broadly, a whole realm of operation seems to have been misunderstood, or not updated in the discourses of distance education and seemingly ignored in the discourses of legal education.

A search of legal and distance education databases and the library resources of the Institute of Advanced Legal Studies and the Institute of Education produced no specific literature relating to the form of legal education of:

- Students reading externally for an undergraduate law degree, where the syllabus and assessment is wholly decided and designed by the awarding university, which,
- Provides the students with basic resource material but no formal, continuous instruction, where,
- The majority of the students obtain instruction by procuring the services of an independent commercial concern, whose enterprise it is to prepare students for an examination over which it has no academic control.

The closest piece of literature was a research article by Halstead et al (2001) analysing the study approaches taken by distance learning undergraduate law students at the University of Wolverhampton which operates on a different model from the UOL. There were also numerous articles on the undergraduate laws degree of the Open University which exemplified a completely different model and pedagogy of distance education from the UOL external undergraduate laws degree.

1.4 The meaning of multinational legal education

Another factor which has featured frequently in the discourses of distance education and legal education is that of globalisation. The term globalisation was recognised in the social sciences since the 1960s and as a concept gained popularity in the late 1980s onwards. However, for a term which has featured in almost every major economic, political and social report in the past decade, a single definition of globalisation is difficult to come by. Contemporary theorists have agreed that at a basic level, globalisation involves deterritorialisation of and interconnectedness across existing geographical and political boundaries which occur at an accelerated rate in a multi pronged process affecting all facets of social activity (Stanford Encyclopaedia of Philosophy, 2006). Simply put, the globe is perceived as less vast than it once was. Human activity has far reaching effects due to the speed at which goods, people and information can travel across geographical boundaries. Thus, the impact of any event or action must not only be judged locally but globally. Despite this general understanding, the dangers of trying to use a single conceptualising term on a phenomenon of this level has been noted by Twining (2001), who has been a vocal critic on the vogue of using general terms such as global and globalisation.

One aspect in which globalisation has affected the study of law, albeit in a superficial manner (Twining, 2001) is to increase specialised topic areas. Such topics are usually prefixed by the terms “international” or “comparative”. The increasing unification of Europe has also necessitated specialised study, not only in the laws on individual European countries but also of the overall growing body of European law. The issues this raises for legal education are numerous. The contemporary law student not only needs to have knowledge of the laws of their national jurisdiction but would also need to have some knowledge of the laws of other national jurisdictions vis a vis their impact and applicability and procedure. The movement of goods and services across national boundaries also mean that law graduates may be employed in countries other than those where they have received their undergraduate education and thus any legal knowledge and vocational skills gleaned must necessarily be transferable and marketable to the needs of their country of employment.

The growing call for undergraduate legal education to meet these aims, to create an undergraduate programme of global legal education raises some red flags from Twining (2001) who argues that the terms global and globalisation are extremely vague so how can it be possible to conceive a general programme of legal education to serve it? Is it even possible to identify the components of what a global legal education encompasses? The role and ambit of a lawyer differs in each country, job opportunities for law graduates also differ and most importantly, the duration, depth and breadth of legal education differs in each jurisdiction depending on varied factors such as the needs of the individual legal system, political climate and educational resources. Twining argued that the knowledge and skills required to resolve or transact issues which are truly global are usually the province of a (relatively) few highly trained specialists operating in equally specialist organisations. Thus, "if it is suggested that the training of such specialists should be a concern of primary legal education and training, this seems like making the tail wag the dog... Such specialisms are highly diverse, rapidly changing, and are normally the province of tiny elites. Generally speaking, training for them through hands on experience or formal instruction belongs to the secondary or tertiary phases of professional formation and will be relevant to a small proportion of students. Devising suitable systems of primary education and training is difficult enough without this kind of talk exerting a distorting influence" (Twining, 2001:31).

Some might consider the ULP a prime candidate to implement processes to reflect a syllabus geared towards global issues and implications. The size and scope of the ULP shows some evidence of being a single educational programme having a global audience and global implications. In the research period there were approximately 14,500 students registered for the LLB by external study that came from different backgrounds and different countries, with the main markets being (in descending order: Hong Kong, Malaysia, Bangladesh, Trinidad and Tobago and Pakistan. Relatively large numbers are also registered in Sri Lanka, UK, Singapore and Jamaica. With the exception of Singapore, the UOL LLB by external study is accepted as a qualification for professional examinations and eventually for practice (see Appendix 2 on where candidates sat the 2013 examinations).

Bearing in mind Twining's (2001) reservations, referring to the ULP as a global programme may be an overstatement as there are countries (mainly from a Civil or Islamic law structure) where the UOL LLB has little or no relevance. But when considering that most distance education programmes serve very limited markets, the ULP can be said in comparison to have a strong multinational, if not global presence.

However, while the presence of the programme can be considered to be multinational, the content of the legal education as determined by the ULP syllabus seems to be the antithesis of diversity. The syllabus is designed specifically around the English Common Law. There are individual subjects in European Union Law, public international law. Conflict of Laws and introduction to Islamic laws, but these are optional. The core subjects are based on the requirements for an English Qualifying Law Degree as posited by the JASB.

Thus, students in countries outside of England may go on to practice in a legal system which is considerably different, but receive their first stage legal education in English Law. This can be said to result in ethnocentricity or display a subtle remnant of colonisation (especially in light of the British Government's former enthusiasm to

maintain the external system and UOL as the “Mother University” of the British Empire). One may raise the argument that since the main markets for the UOL LLB by external study are countries in the former Commonwealth which also operate a Common Law legal system, the students are thus receiving a legal education which is broadly relevant in terms of general principles and structure. Gordley (1993:1) takes the argument even further and states that the general concepts of law are similarly applicable across legal systems and “with the enactment of the Chinese Civil Code, systems of private law modelled on those of the West will govern nearly the entire world. Western legal systems, moreover, are much alike. Both common law systems, such as those of England and the US, and Civil Law systems, such as those of France, Italy and Germany have a similar doctrinal structure based on similar legal concepts. They divide private law into certain large fields and analyse those fields in a similar way... The organisation of law and its larger concepts are alike even if particular rules are not”.

Twining (2001) regards statements like these as superficial and dangerous. While legal systems may be generalised as common law in terms of structure, the actual workings of the law, its interpretations, objectives and impact are highly dependent on local social and cultural context. The knowledge and skills needed to navigate and operate in any individual legal system necessarily differs, thus it is relevant to consider if the single syllabus offered by UOL is sufficient to provide the required legal education for a multinational audience.

Local social and cultural conditions will also have a significant impact on the students’ educational experience. The pedagogy of UOL is limited to transmission through written text, technical media and occasional seminars. With 80% of external law students choosing to enrol in a third party institution, how does the local teaching impact the students in the study for a foreign law degree?

The aim of the thesis therefore, is to use the case study of the UOL International ULP and specifically, the ULP in its most commonly used structure, where students registered on the programme are receiving tuition support from an independent third party institution, to fill in the obvious gap in the knowledge and understanding in the three areas of legal education, distance education and multinational legal education.

The case study seeks to provide a new body of knowledge and understanding of this unique phenomenon in the way of constructing a narrative of the lived experiences of the key stakeholders involved. Modelled loosely on the methodology of Cownie’s (2004) study of legal academics in the UK, the narratives gleaned from the research data are used to shed light on the practical operation of the ULP and its relationships with students and independent third party institutions. The study also examines how the key stakeholders view themselves and their role within the operational structure and the issues and challenges faced. While it is acknowledged that the research captures the operational structure during a specific period (2001-2011), the thesis argues that it may be possible to build an argument for the existence of a particular and identifiable culture, and that such culture, although borne out of a model of legal education that is *sui generis*, nevertheless, displays some elements and issues that are similar and relevant to the broader study of legal education in the traditional non distance context.

Cownie (2004) recognises that culture as a concept is not an easy one to define, but for the purposes of her study, she adopts the meaning used mainly in anthropological and organisational studies, where culture is generally understood to be the shared behaviour, norms and understandings of a particular group. It is the existence of a culture which allows members of a particular group to function and to mutually understand the meaning and motivations of certain acts, whether explicit or tacit. Culture ensures that the group builds up a pool of specialised resources through shared learning, which in turn aid outsiders wishing to become members of the group in assimilating. Identification and understanding of a culture allows outsiders to see meaning in the actions taken by members of the group and following Ryle (1975), allows outsiders to engage in “thick description”, where acts are understood to have particular significance and motivations.

As the functions and goals of any particular group very seldom remain static, subject as they are, to influences from external factors such as regulatory limits imposed by law, organisational structural changes and fluctuations in the levels of resources, consequentially the culture of the group shifts and adapts in parallel. Such cultural shift constantly occurs, albeit sometimes on a very subtle level that is only manifest after a long period. Changes in membership of the group may also result in cultural shift as the remaining members adjust or modify their practices in response. As such, as recognised by Billington et al (1991: 29) culture is not a single delineated structure but instead, a continual process of becoming.

1.5 Communities of Practice: an additional organising concept

Using this understanding of the meaning of culture, the theory of communities of practice is useful in structuring the research. Following Wenger et al (2002:4), communities of practice are “groups of people who share a concern, a set of problems, or a passion about a topic, and who deepen their knowledge and expertise in this area by interacting on an ongoing basis”. The members of these groups find value in their interactions, and through their interactions, they may create shared tools, standards and documents which they use in furtherance of their shared concern. Further, they may also develop tacit norms and understandings which aid communication and interaction within the group. It is argued that within a community of practice, these shared norms, understandings and products of interactions form the culture of the community

More importantly, Wenger et al (2002) argue that through time or to use Billington et al's (1991) phraseology “continual process of becoming”, communities of practice accumulate knowledge. Wenger et al identify communities of practice as the oldest form of knowledge based social structures, and they further reason that without the presence and healthy development of communities of practice, organisations would be hard pressed to generate and accumulate valuable knowledge to aid and sustain their growth in a competitive and challenging environment.

It follows then that, if the thesis is able to identify a community or communities of practice amongst the UOL International ULP, independent third party institutions and students, such community or communities would throw up a body of knowledge which would present useful addition to our understandings in the study of legal education,

distance education and multinational legal education. Drawing further parallels to culture as a thing in continual flux and development, Wenger et al (2002:9) stress the fact that knowledge generated by a community of practice is not “a static body of information” but is instead, part of as well as a result of continual and ongoing lived experience of the community members. The theme of communities of practice is a recurring one in this research. In mediating the separate interest groups and stakeholders involved in the UOL external ULP, it is evident that the research field can be looked at as a singular entity or be broken into component entities within a wider containment structure.

Taking a very broad approach, it is possible to conceptualise the UOL external ULP as a singular entity constituting a community of practice (hereinafter CoP), with members of the said community encompassing:

- Those working within the UOL external Laws Consortium who contribute to the academic direction of the programme and those working within the External Laws Committee (ELC) and EISA (International Academy),
- Independent third party institutions
- The students registered for the programme who are receiving tuition support from the independent third party institutions.

Within this broad approach, it may also be possible to identify smaller CoPs. Of these three broad groupings included in the singular community, separate CoPs may exist. For example, it may be possible to identify a CoP within independent third party institutions who provide tuition support for the UOL external ULP, or a CoP between students who are registered and studying in such institutions. On a more micro level, it may, for example, also be possible to identify a CoP between institutions in a particular country and between students registered in a particular institution.

Throughout the chapters, the question of whether CoPs can be identified is a constant background consideration.

The concept “community of practice” refers to a group that interacts to achieve a shared purpose or enterprise. It is not necessary for the group to share physical space or proximity; the crucial basis for recognition as a distinct community is the orientation to achieve shared purpose or outcome. For Wenger (1998) when people engage in the pursuit of shared enterprise, it gives rise to collective learning and “results in practices that reflect both the pursuit of our enterprises and the attendant social relations. Those practices are thus the property of a kind of community created over time by the sustained pursuit of shared enterprise. It makes sense, therefore, to call these kinds of communities, CoPs.”

Wenger et al (2002:4-5) provide that: “CoP are groups of people who share a concern, a set of problems, or a passion about a topic, and who deepen their knowledge and expertise in this area by interacting on an ongoing basis...They may create tools, standards, generic designs, manuals and other documents – or they may simply develop a tacit understanding that they share...Over time, they develop a unique perspective on their topic as well as a body of common knowledge, practices, and approaches. They also develop personal relationships and established ways of interacting. They may even develop a common sense of identity. They become a community of practice”.

Despite the fact that the research field consists of disparate parties, organisations, designations and cross national boundaries, it is still possible to identify CoPs in existence as according to Wenger et al (2002:24), "CoPs are as diverse as the situations that bring them into existence and the people who populate them". It is entirely possible for CoPs to be distributed throughout a specific geographical locations or across national boundaries since "[W]hat allows members to share knowledge is not the choice of a specific form of communication..., but the existence of a shared practice – a common set of situations, problems, and perspectives". (Wenger et al, 2002:25). As such, CoPs can also exist within a single organisation or across organisational boundaries. Whilst it is easier to identify a community of practice amongst those groups who share a homogenous function, communities can also be identified amongst groups with heterogeneous functions if they share or deal with a common problem or element.

While CoPs can occur in various forms, they share a basic structure of three fundamental elements, that of: joint enterprise, mutual engagement and a shared repertoire (Wenger, 1998).

Joint enterprise requires the members of the community of practice to share a single overall goal. The purpose of joint enterprise is not to require or achieve simple agreement across the board. Wenger (1998:78) "disagreement can be viewed as a productive part of the enterprise. The enterprise is joint not in that everybody believes the same thing or agrees with everything, but in that it is communally negotiated." The process of negotiation and compromise through discussion, argument and co-operation is generated through the second constituent aspect, mutual engagement.

Mutual engagement concerns the exchanges which sustain and strengthen the commitment to the shared enterprise. It refers to the informal exchanges and activities which may not be directly related to the specific performance oriented tasks required of the enterprise, but nevertheless generate a variety of cultural responses (Cousin and Deepwell, 2005). Following Wenger (1998), the atmosphere of friendliness and cohesion created by engaging in activities indirectly related to the specific enterprise of the community is equally important as the tasks required specifically by the enterprise. It also provides the space for members of the community to exert ownership over their tasks.

Effective mutual engagement gives rise to the third constituent aspect of a CoP, that of a shared repertoire. Shared repertoire emerges when there are "routines, words, tools, ways of doing things, stories, gestures, symbols, genres, actions or concepts that the community has adapted in the course of its existence" (Wenger, 1998:83). With greater ownership or personal control over their tasks, members of the community generate personalised practices which in turn personalise and distinguish the culture of the community.

In more recent literature, Wenger et al (2002) redefine the three fundamental elements that constitute a CoP although the essence remains much the same. The first element is referred to as the domain of knowledge which defines a set of issues. Following Wenger et al (2002:27-28), "[T]he domain creates common ground and a sense of common identity. A well defined domain legitimizes the community by affirming its purpose and value to members and other stakeholders. The domain inspires members to contribute and to participate, guides their learning, and gives meaning to their actions". Wenger et al (2008:30-31) also stress the fact that while a domain may face

an ever varying set of problems or priorities, it is actually the members' commitment and shared understanding of their purpose that define the "identity of the community, its place in the world, and the value of its achievements to members and others".

The next element is referred to as community. Similar to the notion of mutual engagement (Wenger, 1998), community does not only refer to a collection of persons, but rather the ties that bind them. Following Wenger et al (2002:34): "It is a group of people who interact, learn together, build relationships, and in the process develop a sense of belonging and mutual commitment... Members use each other as sounding boards, build on each other's ideas, and provide a filtering mechanism to deal with 'knowledge overload'". Interaction between the members in the community is deemed as crucial as it is by "[I]nteracting regularly, members develop a shared understanding of their domain and an approach to their practice. In the process, they build valuable relationships based on respect and trust" (Wenger et al, 2002:35).

The final defining element is termed as practice, akin to shared repertoire as defined by Wenger (1998). Following Wenger et al (2002:38-39), practice "denotes a set of socially defined ways of doing things in a specific domain: a set of common approaches and shared standards that create a basis for action, communication, problem solving, performance, and accountability. These communal resources include a variety of knowledge types: cases and stories, theories, rules, frameworks, models, principles, tools, experts, articles, lessons learned, best practice, and heuristics. They include both the tacit and the explicit aspects of the community's knowledge...The practice includes the books, articles, knowledge bases, Websites, and other repositories that members share. It also embodies a certain way of behaving, a perspective on problems and ideas, a thinking style, and even in many cases an ethical stance. In this sense, a practice is a mini culture that binds the community together".

Chapter Two

Methodology

2.1 The choice of case study in research design

The research topic is not framed as a specific investigative question but rather, considers issues of social and organisational mediation arising from and impacting the provision of a transnational undergraduate law degree using the UOL's ULP as a case study. Cresswell defines (1994:12) case studies as where "the researcher explores a single entity or phenomenon (the case), bounded by time and activity (a programme, event, process, institution or social group) and collects detailed information by using a variety of data collecting procedures during a sustained period of time". Yin (1989: 23) gives a different emphasis stating a case study "investigates a contemporary phenomenon within its real life context; when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used".

If one chooses to strictly follow the definition provided by Yin (1989), then using the case study method as a research design in this instance may be criticised. Yin's (1989) definition requires the particular case under study to be able to blend seamlessly into the background context. However, while the ULP was conceived and has evolved organically, as stated in the introduction, it is *sui generis* and challenges the known contexts of undergraduate legal education, and distance education.

In the context of undergraduate legal education, current literature and understanding focuses on the issues regarding the traditional university model where the students are in physical attendance and are provided with direct instruction and guidance from the university academics. In contrast, students of the ULP do not attend at any college of the university; they are provided with course material and resources made available online by the university instead of being provided a consistent, structured course of instruction. In the context of university level distance education, current literature and understanding focuses on three main models:

1. Where the distance students are fully integrated into the university through its formal association and co-operation with local providers.
2. Where the entire university or a dedicated department thereof is fully responsible for the teaching learning process usually relying on a high usage of technical media (e.g.: the Open University).
3. Where the distance students are left entirely to their own devices, usually undertaking home study (Peters and Keegan, 1994).

While the last model is the one traditionally attributed to the University of London's external provision, changes in the ULP in the last decade have resulted in a blend of the three models to varying extents.

As such, the ULP, while clearly relevant to each context, distinguishes itself as a single unique entity. Following Verschuren (2003), there is no methodological reason why clarity or the lack of it between the phenomenon and the context should affect the

selection of the case study as a research design. In fact, the unique nature of the ULP lends itself to building a stronger rationale for using the case study method. For Stake “the foremost concern of case study research is to generate knowledge of the particular” (Stake in Schwandt, 1997:13). Since there is currently scant literature on this particular phenomenon, it is argued that a detailed case study research will fill the gap and provide a further dimension to the contexts referred to earlier.

Reinforcing the choice of the research design, Denzin (1978) states that case study research is one of the appropriate methodologies to utilise where there is little knowledge or a general lack of theory regarding the particular phenomenon. As such, the research is unable to start off with a specific hypothesis to investigate but instead studies the phenomenon in detail with the intent of providing an interpretation, explanation or theory of the issues arising (Minnis, 1985). Minnis (1985:195) specifies that case studies utilised in education research are generally of two types: “The first is the within case design which looks intensively at a single situation with the intent of examining the relationship of multiple variables within a bounded system. The second are cross case designs that synthesise the lessons learned from a number of cases for the purpose of developing more generalised explanations.” This research uses the within case design.

2.2 The Research Purpose: Appropriate Research Approach

Frequently, case study research in the realm of education is undertaken to test the effects of a particular course of action, or to provide understanding of the current situation before policy makers decide on the course of appropriate action. Following Macpherson et al (2000), action research is geared towards articulating the means to change social practices and policy directives. It takes place in cycles, where the researcher follows the planning and implementation of the action in one cycle and tracks the effects and outcomes in another.

In the later period of research the ULP faced challenges implementing changes in syllabus and assessment method as requested by a periodic review in order to comply with the requirements of the JASB as set down in the QAA laws benchmark and the Joint Statement of the Legal Profession. While such actions are clearly important, it is not appropriate to undertake a full action research in this respect. Instead, such actions are a consequence of coping with mediating factors that the research outlines. (The first major batch of the students to undergo the modified syllabus were registered in 2010 and it is not the purpose of this research to obtain sufficient data to advise or appraise on the success of precise changes, nor is it appropriate to take a deductive approach towards the research such that one specified precise questions relating to efficacy in change.)

The purpose of this research therefore, is to explore the different aspects of the mediation of the programme. That is to say relationships that are constituted by and reflective of:

- 1) The organisation of the programme
 - Administrative Responsibility
 - Academic Responsibility: Syllabus design and assessment

2) The Social or Lived Experiences of:

- Academic Staff of the Laws Consortium
- Academic Staff of independent third party institutions
- Students

3) The impact and implications of the UOL LLB in the different countries.

Thus, the case study is inductive and interpretive in approach. By studying the social mediation of the programme, the research wants to provide an understanding on the workings of this unique form of distance and legal education, as well as an understanding of the motivations and circumstances and behaviours of the actors involved through a study of their lived experience in the programme. Consequently, by building a narrative of lived experience, the case study seeks to identify a thread of culture or cultures, and answer the question of whether such culture is strong and identifiable enough to lead to a finding of the existence of a community or communities of practice.

While Bradney (1997) acknowledges the legitimacy and growth of legal education as an area of academic study and Cownie (2000) reiterates the importance of coherent theory in legal education, there has been little attempt to generate or apply existing theory to distance undergraduate legal education. By taking an inductive approach, the research may be able to generate or identify relations to appropriate theory (Bryman, 2004). Also, according to Weber (1947:88), sociology is a “science which attempts the interpretive understanding of social action in order to arrive at a causal explanation of its course and effects”.

2.3 The Research Process

However, choosing to focus mainly on the social actors in the programme may go against the assertion that a case study research should be holistic rather than reductionist in nature (Verschuren, 2003). There is a danger that each subject studied would be regarded as an individual observation unit. Following Verschuren (2003:126), “a central attribute of a case study design, clearly differentiated from a survey, is that no difference is made between research units and observation units... the researcher tries to look as much as possible at a case as a whole”.

Thus, the research process must ensure that the holistic nature of the case study is adhered to. Looking at each research subject as individual observation units would result in tunnel vision, which is “the tendency to look at an object at one single point in time; detached from its physical, social and political context; without taking into account its relations with other objects in the case; and without looking at the functions that it fulfils for the larger whole (i.e. the case) of which it is a part” (Verschuren, 2003:128). To avoid this danger, the research methodology must avoid being mainly dependant on statistical data or emphasising variables between observation units. To preserve the holistic nature of the case study, the research should look at the issue as a configuration rather than variables, and the ultimate aim is to identify patterns or types which may give rise to or fit an appropriate theory.

Verschuren (2003) describes a research methodology which preserves the holistic nature of the case study research and which is entirely appropriate for this instant. Firstly, “the researcher looks at how an object interacts with or is embedded in its natural context. This means that the research is preferably carried out in situ. Besides, in general one can say that direct visual observation is more holistic in nature than data gathering by means of verbal reports, such as interviews with separate individuals” (Verschuren, 2003:131). The fieldwork to gather data for the research will be primarily reliant on direct participation and first hand observation. The researcher was a student of the programme, a teacher at an independent teaching institution and then had a post within the ULP as a graduate teaching assistant (GTA) and as an examiner for the subject of Common Law Reasoning and Institutions. Being part of the programme enabled the researcher to observe the management, development and implementation of the administrative and academic initiatives. As an examiner, the researcher is privy to meetings of the board of examiners and is part of the assessment process. The GTA role also required the researcher to travel to the main student markets to conduct lectures and seminars for external laws students (usually conducted in independent third party institutions). The researcher was able to observe student reactions and increase cognizance on frequently asked questions. Students were also observed in their usual classroom environment by sitting in on lectures conducted by the academic staff of the independent third party institutions.

Access to these fields was arranged and legitimised through the researcher's role as a GTA. As the researcher's name and photograph had been featured in official capacity in the external laws brochure and website, covert observation was not possible. The researcher had met a number of management and faculty members of independent third party institutions while conducting a smaller scale research previously, thus the identity and intentions of research were made known and, thus “members of the social setting are aware of the researcher's status as a researcher. The ethnographer is engaged in regular interaction with people and participates in their daily lives” (Bryman, 2004:301). Awareness of the researcher's status is not envisioned to be a problem within the Laws Consortium, Board of Examiners and staff of the ULP. The research was funded for three years by GTA status and all persons involved were aware of the intent and nature of the research project. It was also made clear that it is the programme, forms of mediation operative and the interaction within it as a system that is under research and not any individual in particular, thus this reduces danger of the observation subjects developing reticence or being artificial due to anxiety or self-consciousness.

Awareness of the researcher's status may prove slightly more problematic in the observation of students and staff of independent third party institutions. While UOL does not maintain any strong formal association or affiliation with any such institution (the system of recognition that was introduced c. 2006 is not strongly directive), the institutions are keen to maintain good informal relations and impressions, and thus they may only arrange for observations under circumstances which they have constructed as being ideal. However, experience from observation done for an earlier research showed that only four institutions regulated the natural setting and that most institutions have proven that they are confident of allowing their processes to be open to external observation.

Following Gans (1968), the researcher sought to employ three roles:

- 1) Conducting lectures and seminars for the external laws students in the official capacity as graduate teaching assistant – As a total participant during the class and immediately after, only reverting to researcher role and making notes once away from the students.
- 2) Attending meetings and informal discussions with staff of the ULP and the board of examiners – As a researcher participant, being semi involved and still able to take notes and ask questions as the subjects are aware of the research and the nature of the participation.
- 3) The functioning of and the classroom environment within third party institutions – As a total researcher, without involvement in the situation and making records as events unfold.

However, it is recognised that observation as the sole means of gathering research data is inadequate. Observation will allow for data to be obtained in terms of behaviour, process and interactions, but may not be able to shed much light, at least initially on the motivations behind such actions. In the course of observing the main actors in a setting where they are going about their actual work or study, it may not be feasible or reasonable of the researcher to interrupt proceedings to ask questions in order to clarify any uncertainties about why a particular behaviour or course of action was undertaken. Thus, while observation data will allow for setting the scene and rich description of how things operate, further data needs to be collected to find out the reasons why things operate in such a manner.

In order to maintain the holistic nature of the case study research, in depth semi-structured interviews supplemented observation data. Verschuren (2003:131) opines: “Observation reveals behaviour but no motives for that behaviour. The opposite holds true for an interview; it may reveal motives but no behaviour”. The semi structured interviews aimed to obtain individual points of view about the context of the case studied or event that have taken place during the observation, while taking care to ensure that no single point of view is taken to be definitive bearing in mind the holistic nature of the research. The contents of the interviews are intended to provide the rich detail about the issues arising from and affecting the actors in the case, such as values and beliefs, roles and relationships, emotions, encounters and anecdotes (Bryman, 2004).

The semi structured interview technique was judged to be the most appropriate in this context to complement the observation data as it allowed for the researcher to design a baseline of consistent questions, while still allowing the opportunity for flexibility to expand upon or ask follow up questions in response to the answers given by the subject during the interview. It is appreciated that interviewing with the objective of learning about lived experiences will result in subjects possibly raising issues at a tangent. Leidner (1993:258) highlights the advantage of semi structured interviews having the advantage of allowing the subjects room to pursue topics of particular interest or allow the interviewer to probe further into a response. It is envisioned that the interviews will be fairly conversational, however, not to the extent that they could be described as unstructured interviews. The interviews are designed to seek to ask each interview subject certain baseline questions that will be common to all subjects within the interview group as described below, however, tangential and specific questions may be asked in follow up depending on the issues raised in the subject’s response. Also, depending on issues raised in the responses in initial interviews, they may allow

“an iterative process of refinement, whereby lines of thought identified by earlier interviewees could be taken up and presented to later interviewees” (Beardsworth and Kell, 1992:261-262). Bryman (2004) also champions the use of semi structured interviews when doing research of a particular organisation as there would usually be specific organisational issues that would need to be addressed, and as such a free flowing unstructured style may not ensure that those issues will be reflected upon by the interview subjects. The structured interview was also judged inappropriate in this research since the aim was to build a narrative of lived experience. Lived experience by its very nature differs accordingly depending on the individual’s personal circumstances and perceptions, thus structured interviews with fixed questions may not allow for the breadth of experiences to be sufficiently recounted or reflected upon in the responses.

The interviews conducted were threefold:

- 1) Selected members of the ULP and academic members of the Laws Consortium and the board of examiners – The questions asked focused on the pre conceptions of the programme and their positions within it, their experiences and challenges while working on the programme and their relationship with the administration of the UOL International ULP, third party institutions and the students.
- 2) Management and faculty of the independent third party institutions – The questions asked focused on their motivations in starting an enterprise supporting the programme, their experiences and challenges in running that enterprise, their negotiation with local perceptions and cultures towards the programme and their relationship (both personal and official) and experiences with UOL and students. Also, the teaching faculty were questioned on their personal experiences and motivations within the field of legal academia. Modelled on Twining’s (1994) imaginary case study in the culture of an English law school, the questions (which were also prompted by or supplanted with issues divulged by the observation data) alluded to their values and attitudes towards their profession and the discipline of law.
- 3) UOL International Laws students – The questions asked focused on their motivations and challenges in pursuing legal education and in particular this course of legal education, their perceptions and experiences in receiving tuition support from an independent third party institution and their perceptions of and experiences with UOL.

Gaining access to the interview subjects was negotiated by the then Director of the External undergraduate laws programme. The Director sent out a letter to staff of the department as well as the third party institutions explaining the nature and purpose of the research and requesting their co-operation if called upon. Access to management and faculty of the third party institutions was further assisted by the fact that the researcher had previously worked for seven years in an institution that had branches in Hong Kong, Malaysia (two countries with the largest numbers of registered students on the programme) and Singapore, and was personally acquainted with the prospective research subjects in these institutions. The researcher has also socialised informally with management and faculty of several other third party institutions during teaching visits in the capacity of GTA and thus has built a level of acceptance and trust. This relationship with the institutions also helped to gain access to student subjects, where contact for interviews were arranged through the institutions, although permission was sought from them personally once the nominations were made. From earlier

experience, the risk of students being groomed by the institutions to give appropriate or favourable answers was recognised. However, this risk was minimised by the following ways:

- By stressing to the institutions the importance of nominating students representative of the general student population (insofar as such can be identified) of their market. The general criteria would be to measure the student in terms of age, educational background and mode of study (part time or full time) against the student population of the programme in the individual country.
- Through regular teaching visits to the main markets over the previous two years and previous work experience in the third party institution, the researcher sought to identify the general traits of an average student in the market concerned
- By explaining clearly to the student subject the nature and purpose of the research prior to commencing and by conducting the interview in places away from the institution.
- By undertaking to the student subjects that any unfavourable comments or anecdotal observations made during the interviews regarding the institutions processes, service or staff members would remain strictly confidential, and the data, if quoted in the research would not mention any identifying information.

2.4 Selecting the research sample

As stated in the introduction and acknowledged later in this chapter, the overall research context is not and is not meant to be representative of the UOL International ULP as a whole. Instead the research seeks to make a case study of a particular phenomenon within the ULP (albeit a phenomenon that describes majority of the wider operational structure and student experience within the ULP), which is that of students reading for the ULP and choosing to receive tuition support from an independent third party institution and the three way relationships resulting from this structural set up. It is within this context that the research sample for observation and interviews are selected. While it is generally assumed that probability sampling would result in a representative sample and consequentially provide data that will lend itself better to generate findings that can be applied generally, this research employs non probability sampling (mainly convenience sampling) primarily due to issues of access, convenience and legitimacy.

The first group of research subjects identified are directly associated with or employed by the provider of the course that is under study. They were:

- Members of the academic team of the ULP
- The examiners in the undergraduate course syllabus

From this group, it was decided that there would be some degree of overlap as the members of the academic team of the ULP were (at that time) also acting as examiners in various subjects, thus it was crucial that they be invited to participate in the interviews as they would be able to shed light on various aspects of the programme and its operations, in both administrative and academic capacity. Of the remaining examiners, the decision was made to invite for interview those who were also teaching

or had taught at a UOL college as they would be better placed to experience and identify issues of similarities and contrast between internal and external provision. It also had the added advantage that since they were living in London, access to meeting for interview sessions would be easier to arrange. It was also decided that the examiners selected for interview should be examining in at least one compulsory subject, and /or hold or have held Chief examiner status, on the ULP syllabus as it would increase their exposure to a greater number of students and assessment scripts leading to a wider insight. This resulted in a total of 12 potential subjects identified, out of which 9 went on to become interview subjects. Out of the remaining 3, 1 was not contactable due to illness and travel, and while the other 2 were agreeable to an interview, despite several attempts, arrangements fell through, although one of them did provide interview data through informal conversation.

It is recognised that this sample, numerically at least, does not provide proportional representation of all those who provide academic contribution to the programme. There are about 90 examiners who assess for the ULP and many of them are employed by universities other than the UOL. It would certainly have added value to the research to obtain their views on their role within the programme and their experiences of working on it. An initial decision was made to approach 3 experienced examiners, two of whom were former chief examiners for the possibility of an interview. However, it became very difficult to arrange for a full interview due to the fact that they were living a great distance from London and two were semi retired and spent a lot of time outside of the country resulting in scheduling problems. Thus, a full interview was only possible with one such subject.

Despite the fact that this sample is numerically limited in proportion to the overall number of possible subjects, the possibility of sampling error is tempered by the fact that those who managed to provide an interview are very actively involved in the programme, usually taking on a multitude of roles, from providing academic structure within the administrative structure of EISA/International Academy, assessment, to providing ad hoc teaching to students through weekend end courses and revision seminars. Thus, they are well placed to have experienced different aspects of the programme and have had exposure to students and independent third party institutions, as opposed to simply examining on the programme. As such, their perceptions and experiences may be of greater general application as they have “lived” the programme and its operations more holistically than those whose role is solely of that of assessment.

The second group of research subjects identified were the independent third party institutions who provide tuition support for the programme as a commercial enterprise. There are several such institutions in various countries and the research has chosen to focus on institutions in four major markets, namely:

- 1) Malaysia
- 2) Bangladesh
- 3) Trinidad & Tobago and Jamaica
- 4) Singapore

Again, this sample was not chosen on probability, but due to reasons of access and students numbers. From figures provided by the UOL, these four countries together with Hong Kong and Pakistan represent the largest numbers registered on the programme. However, the majority of students registered in Hong Kong are pursuing the ULP through the graduate entry route, which entails them holding a previous undergraduate, or post graduate qualification and reading fewer subjects than regular undergraduate students. On this basis, it is judged that their experiences may differ from those of the typical undergraduate student and as such, any data or findings of the average Hong Kong experience may not be entirely relatable to the issues in traditional undergraduate legal education. In the case of Pakistan, while data from there would have provided valuable, due to security reasons, travel access to the region during the fieldwork period was judged to be too dangerous. While Hong Kong was not directly focussed on, some comments from UOL related academics and some tutors from third party institutions do reflect experiences teaching in Hong Kong.

Classroom observations were conducted at all major institutions (determined through student numbers registered) in these countries and semi structured interviews conducted with at least three members of staff at each such institution, namely, one member of the management or administrative staff, one member of senior teaching staff and one member of junior teaching staff. This resulted in a sample group of a total of 14 institutions and some 42 members of staff to be interviewed. However, only 21 members of staff in these institutions were formally interviewed, raising the possibility that the sample would result in insufficient data. This was due to several reasons, one of which was that of access. In Bangladesh, Trinidad and Tobago and Jamaica, many of the teaching staff were employed on a part time basis and were usually combining teaching with practice. This meant that they were unable to commit to an interview session when the researcher was in the country. Although the interview schedule tried to be as accommodating as possible, the fieldwork trips were usually combined with scheduled teaching on the part of the researcher and thus timing was limited. Also, institution representative of one of the major institutions in Singapore did not respond to requests to conduct observation and interview and after 3 attempts, a decision was made not to pursue the matter. Attempts to interview the institution heads of two of the three major institutions in Trinidad failed to materialise despite their initial agreement to sit for formal interviews, although observation sessions were successfully arranged and they were willing to provide anecdotal information in informal conversation.

Furthermore, due to the nature of the way most independent third party institutions were founded (discussed further in chapter five), many of the management roles in the institutions were also occupied by the senior teaching staff, thus negating the need to conduct interviews with separate candidates. This also mitigated to an extent the possibility of lack of data resulting from the sampling approach, as it meant that the candidates who were interviewed had been employed for a longer period within the institutions, and had experience of multiple roles and aspects within the programme and a greater degree of student interaction, thus they were in a better position to provide a more extensive narrative. However, it did open the possibility of the data reflecting the views of those who were more institutionalised and who may perhaps have a more vested commercial interest in the institution rather than a solely academic perspective. The last group of research subjects identified were students of the programme. The research initially sought to track and interview five students in each country once a year, over the three years of their undergraduate course. However,

when the logistics for the fieldwork started, this plan had to be revised. It was realised that because the access to the student subjects required the researcher do travel extensively to the research countries and usually combined a plethora of teaching engagements within a limited time, the possibility of doing consistent, systematic tracking would not be possible due to time and budget constraints. Thus, the decision was made to interview a group of students at each institution, and extend the interview duration in order to obtain a fuller narrative of their experiences and perceptions. The institutions in the above mentioned countries were asked to identify students, who, in their opinion, were typically representative of the UOL International ULP student in their country and to ask them if they wanted to participate in the research and then personal requests for participation and permission letters will be sent to them. Participation was entirely voluntary and students were told that decision to participate will in no way impact upon their performance on the degree.

This resulted in 30 student subjects who agreed to sit for formal interviews, with 10 from Singapore, 9 from Malaysia, 6 from Bangladesh and 4 from Jamaica. Again, it must be acknowledged that this sample is not proportionally reflective of the student numbers distributed in these countries, as Singapore is proportionately overrepresented and Trinidad and Tobago is not represented at all. This was the culmination of several factors of circumstance. In Singapore, there were 5 students who were previously identified and selected for interview and on the occasion of the interview, other students who were in the institution found out about it and were eager to also participate. They approached the researcher who agreed in the view that additional narrative would add to the holistic nature of the research by adding perspectives which can be used for comparison and confirmation, but it may also mean that the Singapore student perspective is more frequently represented when compiling the data and may not necessarily be useful in generalisation of the overall student perspective.

In Trinidad and Tobago, communication with the institutions about arrangements for research was somewhat chaotic and assurances were made that opportunity to conduct interviews would be organised. However, on the day of the interview, it transpired that the students who had been identified and approached as research subjects were either not in attendance or had left after their scheduled classes. The researcher has also not been provided with the contact details of the identified students beforehand, unlike the rest of the countries, so as to enable direct planning with the students prior to interview. This may cause possible difference in interpretation of the data as the only perspective of the Trinidad student experience will be from the position of the institution.

Despite the possibility of differences in data collection and interpretation arising from the approach of convenience sampling, it is argued that this will not negate the value of the research. The aim of the research is to seek the possibility of an existence of a community of practice and to provide insight on an area previously under researched through the building of a narrative. It is hoped that in the process of building the narrative, findings which may be related to issues in legal education, distance education and multinational legal education may be identified and linked. It is not intended to provide definitive findings (which may not be possible anyway, in light of the fact that the programme is in constant flux). In this regard, Bryman (2004) defends the use of convenience sampling as a data collection approach and notes that it is in fairly

prominent use in the field of organisation studies and social research, which is certainly apt considering the title of the thesis (Bryman, 1989a)

2.5 Research Limitations

It soon became apparent that the very process of research became subject to some of the mediating processes that the research sought to make clear and examine. For example Pakistan, a significant market with a large number of registered students, was originally thought ideal to bring out particular difficulties in study and issues of cultural and political context but political events meant that it could not be visited. Travel restrictions to the country due in part to war in Afghanistan and security issues meant no UOL personnel could visit (making for innovative measures taken to maintain contact with students and staff at institutions). Due to the range of the ULP, it is impossible to design a research plan within the time frame and funding given that includes all countries which have students registered on the course. However, a research objective was to cover sufficient of the major markets in order to represent a diversity of students.

Another limitation is that the research design neglected students who have registered with the ULP but who had chosen not to avail themselves of tuition support from an independent third party institution. Such students generally prepare for the examination through self study with reliance on materials and media provided by the University or sourced by them. Such students are a minority, but occasionally perform very highly. Precise data is difficult but estimates are (e.g. by the former and current Directors) that eighty five per cent of students registered on the programme are also registered and are receiving some form of tuition support from an independent third party institution. Despite their small proportion, the lived experiences of these students can enhance the understanding of the case, insofar as a comparison can be made of the similarities and differences between them and students who have gone through a course of instruction an independent third party institution. Unfortunately, the time frame allocated for this research and the funding available did not allow the researcher to carry out observation on individual students throughout their course.

Further limitations were presented in the form of the numbers of interviews carried out vis a vis the total number of persons employed in the teaching faculties of the independent third party institutions in the target countries and the students attending those institutions. Although care has been taken to select interview subjects that are representative of the staff and student population in the individual country, true representativeness is not always possible in the context of building an ethnography of lived experience. As recognised previously in this chapter, lived experiences necessarily differ based on individual circumstances, perceptions and reactions, and any claim of being able to weave a pattern of lived experience that holds true and is relevant and representative of the experiences of all members in the research context group will be subject to legitimate challenge. Resources and time do not allow for individual interviews to be carried out with all staff and students in the independent third party institutions.

It is thus important to bear in mind, when reading the findings and data presented that while the narrative seeks to identify similarities in motivations, actions and perceptions

in order to answer the question of whether there is a recognisable culture, that where the answer to that is in the positive, there is always the possibility of a contrary or alternative position which had not been part of the research data. However, it is argued that the existence of a contrary or alternative position would not automatically invalidate any findings of a culture or practice. Such findings would be based on generalisations drawn from available research data. It is recognised that data, especially in the realm of lived experience is never finite and exhaustive and possibility of alternative positions adds to and acts as a challenge to re-examine and re-evaluate existing findings, rather than invalidating them completely,

These limitations reflect in part limitations on access to and knowledge of students that face the UOL external/international programme in general and are tempered by the fact that this case study research is one of the very few pieces of in depth study done on the UOL's external programme and the only one on the large undergraduate programmes. It is hoped that this thesis is viewed as filling in the gap in the existing literature on undergraduate legal education and distance education and serves as a springboard to further more in depth research. In keeping with the holistic nature of the case study (Stake, 1997), it is hoped that the data gathered and resulting knowledge generated would merge seamlessly and provide context for any further study done in this specific area.

2.6 Analysing the data

As stated earlier in the research purpose, the thesis does not set out to test or verify an existing hypothesis but rather studies the case in order to present data and knowledge about a heretofore under researched field. As such, one possible method of analysing the data would be to use the grounded theory method as developed by Glaser and Strauss (1967). The grounded theory method is defined as "derived from data, systematically gathered and analysed through the research process. In this method, data collection, analysis and eventual theory stand in close relationship to one another" (Strauss and Corbin, 1998:12). Punch (1998) emphasises that "the essential idea in grounded theory is that theory will be developed inductively from data". Grounded theory requires the data to be coded, often even while data collection is still going on in order to generate a theory. Codifying the data would allow general categories, themes and patterns to be established and they in turn may structure future data gathering exercises. To this extent, there were several methods of codifying data, of which selective coding seemed the most appropriate. Selective coding is the procedure of selecting the core category, systematically relating it to other categories, validating those relationships and filling in categories that need further refinement and development. In this context, the core category would be that of a community of practice and the existence of any or all of its 3 constituent elements would be the starting point when analysing the data. Information that pointed to the existence of a community of practice was compiled and categorised and analysed against data that challenged the existence of a community of practice.

However, while there were elements of using grounded theory in analysing the data, it would be inaccurate to state that this was the sole tool used. Research cannot claim to have utilised grounded theory simply by evidencing that any theoretical findings generated had been grounded or validated by data. Following Bryman (2004:401),

"[G]rounded theory is more than this" and refers to a set of specific procedures. Such specific procedures requires there to be a series of formal code categories and for these categories to be in constant review, which in turn generate new code categories. This process must then reach a point of saturation where no new codes can be further generated from the research data. Research which utilises some features of grounded theory cannot claim it as a pure tool of analysis. In any event, it is argued that while elements of it prove useful, pure grounded theory as an analysis tool is not appropriate for the aims of this research.

The thesis does not set out to generate a new theory about undergraduate legal education or distance education. While individual points may emerge during the course of or at the end of the research, the research objective is to present as much data as possible (limited by time and funding issues) about the specific case. As discussed previously in the chapter, the purpose of using the case study design is to present as holistic as possible a picture of the specific phenomenon under study. Following Bryman (2004:407), "grounded theory is very much associated with an approach to data analysis that invites researchers to fragment their data by coding the data into discrete chunks". Coffey and Atkinson (1996) highlight the fact that constant coding and breaking up of data may result in a loss of a sense of context and of narrative flow, which is counterproductive to the aim of establishing a narrative and identifying a culture in context. Charmaz (2000) further argues that grounded theory objectifies data by assuming that data can be neatly separated into individual codes and categories. To do so would be to assume that categorised data is able to shed light on reality separate and external to social actors. This criticism is particularly relevant to the issue of why grounded theory on its own cannot be the main analysis tool for the research. The basis of trying to identify a community of practice is rooted in examining the actions of its members in context. Every action and interaction must be looked at in context of the community and impact and reaction of the social actors within. Trying to understand an individual action within a community of practice without knowledge of the context behind the action is pointless.

To these ends, whilst it would be fair to state that some loose elements of the processes of grounded theory were utilised in analysis, the main analysis tool would be that of narrative analysis. Following Bryman (2004:412), narrative analysis at its core "entails a sensitivity to: the connections in people's accounts of past, present and future events and states of affairs; the stories they generate about them; and the significance of context for the unfolding of events and people's roles within them". Using this definition, it seems clear that narrative analysis is the appropriate tool of choice in interpreting data relating to situating the ULP within the described context. Furthermore, in seeking to identify a community of practice, the starting point would be to determine whether there is a domain, a sphere of common ground and mutual interest. The most obvious way of determining this would be to analyse the perceptions of the putative members of the community in relation to their place, role, motivations and participation in order to extract elements of shared purpose. The second element in determining community of practice is the element of community, which necessitates interactions and communication between the members. Evidence of this is also appropriately discovered by analysis of interview narrative in order to identify events and actions which point up (?) mutual interaction, communication and cooperation between members. Finally, narrative analysis can also produce evidence, through the discovery of shared language, perceptions and processes, of the presence of a shared

practice or culture, thus strengthening evidence of the existence of a community of practice.

Narrative analysis has been described as a tool of analysing qualitative data in order to build a narrative through recounting of events, incidences and perceptions, however, “there has been growing recognition of the nature of ethnography as being a narrative that is designed to tell a story about a way of life. In this respect, using the tool of narrative analysis in order to build an ongoing argument for the presence of a community of practice as evidenced by the lived experience of the community members, by using narrative extracted from interview data is arguably appropriate. The research as described in the introduction, seeks not only to discover the existences of a community of practice, but also to shed light on a hitherto ignored aspect of legal education by telling the stories of those involved within.

Thus, it is this nature of telling a story that influences the decisions on the extracts of interview data presented in the thesis. Once themes and patterns have been identified, and compared, they will then be grouped appropriately as demonstrating or disproving one or more of the three constituent elements of a community of practice. Where a claim is made that a particular constituent element of a community of practice exists, appropriate quotes from the interview data will be used to support or disprove this claim. Such quotes are chosen, at times for their concise brevity, or ability to confirm or reaffirm a particular pattern of behaviour or point of view, and at times for their ability to provide further contextual background on the issue under discussion. Some quotes were chosen because they added to the narrative by recounting certain memorable events or encounters which have shaped the lived experiences of the subjects.

There are occasions where certain subjects, due to their unique role within the programme (e.g the director), provide data which does not lend itself to comparison or confirmation. Where appropriate, such views have been presented with the intention of adding to the narrative to show unique moments of personal negotiation and compromise.

It must be acknowledged that the one caveat in using narrative analysis is the tendency to accept the stories recounted in the interview data at face value. It must be borne in mind that when events and experiences are recounted after the fact, it is very often coloured with the benefit of hindsight, or influenced by the interviewees’ need to present or maintain a facade or perception in the eyes of the interviewer and/or research audience. As such, drawing conclusions solely from narrative analysis runs the risk that the findings may not be appropriately critical and thus present a full and accurate picture of the phenomenon studied. To these ends, this weakness is tempered to an extent that narratives from interviews will not be the sole data used and will be judged against data obtained from observation for consistencies and contradictions. Also, responses from interview subjects can be measured against each other in order to identify any potential contradictions between the interviewees’ perceptions of a particular event or issue. The premise of the research lies in the contention that the literature about undergraduate legal education and distance education has generated various strands of theory, but such theory has largely ignored the unique situation of the case. Thus each chapter lays out particular theoretical understandings on the theme of the chapter and presents the research data to see how far it fits with or differs from some or fits other theory. It was anticipated that there would be areas where the data may concur with existing theory but there may be areas

which, owing to the unique structure and pedagogy of the programme, the data may not fit into any existing theory or may even expressly contradict with convention.

2.7 Issues of validity

There are several methodological issues arising from the proposed research plan. The first concerns controllability, researcher independence and internal validity. Following Verschuren (2003:133), it is argued that in “case study research, the researcher has more freedom, and other things being equal, is less controllable than a quantitative research and the methods used may be easily linked to the personality of the researcher”.

It is fully acknowledged that the researcher was and remains (as an examiner) part of the operations of the ULP and has been a senior faculty member of an independent third party institution prior. In addition, the research supervisor was, at the time the fieldwork was taking place, the Director of the UOL External ULP. As such both the researcher and supervisor hold a very high degree of insider status within the research field. This level of personal involvement may colour the construction of interview questions and perceptions of any resultant data from the fieldwork. Indeed, the foundation draft of the interview questions were designed, in part, to ask certain questions relating to issues that had been identified by the research supervisor through his position as director, as being of particular concern to the operations of the programme at the time. This raises the possibility of the interview questions being, to a certain extent, leading, and may influence the resulting narratives gleaned from the responses. It may also colour the interpretation of the data, if the insider experience of the researcher prevents or hinders recognition of issues and perspectives which do not accord with their personal beliefs and experiences in the field. As identified by Cownie (2004), when the researcher (and in this instance also the supervisor) has such a high degree of insider experience and participation, the research runs a real risk of becoming autobiography instead of ethnography. Roseneil (1992) has also argued that a high level of involvement by the researcher also brings the risk of over familiarity, which may cause the researcher to miss recognising the potential implications of certain data as such events or experiences have become normalised and consequently regarded as insignificant.

It is important therefore, that throughout the research the researcher should seek to maintain a sense of strangeness (Hammersley and Atkinson, 1995) and to consciously avoid as far as possible, trying to hold the data collected against a standard of legitimacy set by the researcher’s personal experience. Conducting the fieldwork over three years was intended to assist in increasing internal validity as following LeCompte and Guetz (in Bryman, 2004:273) “prolonged participation in the social life of a group over a long period of time allows the researcher to ensure a high level of congruence between concepts and observations”. Another aspect of maintaining validity is to consciously identify data which adheres to and contradicts the researcher’s personal experience. Also, once some amount of data had been collected to look for patterns within the data and to reevaluate the interview questions to incorporate questions which may shed light on whether such patterns can be further confirmed or disproved by other interviewees.

However, it may not be entirely possible to completely separate the researcher's own experience when it comes to building the narrative, since interpretation of qualitative data necessarily takes place through the prism of the interpreter's background, experiences and values. Coffey (1992:22) argues that: "[T]he ethnographic self actually engages in complex and delicate processes of investigation, exploration and negotiation. These are not merely professional tasks. They are also personal and social occupations, which may be lost if we revert to an oversimplified model of fieldworker as ethnographic stranger...The image of the heroic ethnographer confronting an alien culture is now untenable, and fails to reflect much of what ethnographers do, if indeed it ever did reflect the lived reality of fieldwork". Cownie (2004) advocates maintaining a constant degree of critical reflection throughout the fieldwork and the writing up process in order to ensure that the interpretation of the data and conclusions drawn are the result of measured extraction, instead of simply being congruent with the experiences and perceptions of the researcher. Cownie (2004) also goes on to recognise that while the researcher's insider status may bring reason for concerns, it also brings about certain advantages, by conferring greater access and legitimacy on the researcher and assisting in phrasing questions by employing concepts and terminology that are familiar to the interview subjects. Having insider status may also allow the researcher to have quicker recognition of anomalies or inconsistencies in data and be able to identify misinformation. Cownie (2004), concurs with Coffey (1999) that while it may be inevitable that the insider status of the researcher will be inextricably bound up with the interpretation of the data and the construction of the narrative, it is only through a total absence of critical reflection that the research product turns autobiographical. On balance, Adler and Adler (1987:84) "believe that the native experience does not destroy but, rather, enhances the data gathering process. Data gathering does not occur only through the detached observational role, but through the subjectively immersed role as well".

Another concern is that of internal reliability, where the findings are strengthened by consensus of others besides the researcher. This research was conducted by a sole researcher, thus consensus among the research team is not possible. However, internal reliability can be strengthened during the data analysis process where the findings are cross checked for similar concepts. Also, any research findings which are of significance or present an anomaly must be followed up upon by means of further observation or interview questions.

Perhaps the greatest methodological concern of all is that of external validity or the extent to which any data or theory generated can be applied to other settings. The research was motivated by a gap in the literature of undergraduate legal education and distance education to address the existence and scope of the UOL's ULP. Thus, the research is conducted within the limited ambit of the specific programme. How would any resultant findings translate when applied to undergraduate legal education or distance education in general, especially since the unique characteristics of the programme have been acknowledged? Furthermore, the research field has been recognised as limited to certain markets and the student subjects chosen (despite being selected for representativeness of the market) represent a fraction of the total registered student population on the course.

This problem can be tempered by taking Williams' (2000:15) argument that qualitative case study research can produce some generalisations, where aspects of the case

studied “can be seen to be instances of a broader set of recognisable feature” and Yin (1989) also states that generalisability refers to theoretical propositions, not to specific populations or universes. Dewey (1929:187) in his classic *The Quest for Certainty* wrote of objective relativism which provides the strongest support for the methodology of this research. He argues that no experienced situation can retain indefinitely its character of finality, for “the interrelations that constitute it are, because they are interactions, themselves changing. They produce a change in what is experienced... in the continuous ongoing of life, objects part with something of their final character and become conditions for subsequent experiences. In other words, all experienced objects have a double status... part of the organic activity is directed to them for what they immediately are, and part of them as transitive means of other experienced objects”.

As such, any resultant findings from the interactions of the actors within the case should not be viewed as finite and definitive to be applied across the board. Rather, the findings should be taken as an experimentation in a possibly subjective and limited value field which provide a stepping stone to “forming objective assessments with respect to what is valuable in the general community” (Hickman,2004:171), in this context being that of transnational education, undergraduate legal education and distance education.

2.8 Ethical Considerations

An ethics approval submission has been made to Queen Mary College and full approval has been given for the conduct of this research. A copy of the approval has been sent to the research supervisor and stored on record.

It is not envisioned that participation in the research will cause harm, either physical or mental, to any of the subjects. All research subjects were provided with the option of requesting a transcript of their interview responses if they wish to have one or the option of reading through the final thesis to view any possible quotations in full context (none stated that they wished to exercise that option). Personal permission was sought from all research subjects, whether for observation purposes or interview. In the case of classroom observations, due to the number of people being observed, it is not practical to seek individual permission from each of the student subjects, thus awareness and permission was sought by making an announcement before the commencement of the session that observation was being done solely for the purposes of academic research, and the student subjects were made aware that they had every right and opportunity to refuse to participate. In the event that any student subject refuses to participate, the observer undertook to cease research observation and collection data. A commitment given was that under no circumstances would any student subject be made to leave the classroom setting or miss the lesson if they refused to participate in the observation session.

It was also envisioned that throughout the data gathering process, the researcher would be working in very close proximity with members of the UOL academics and staff on the ULP, as well as staff and students from the independent third party institutions. The position of GTA provided this but due to restructuring of the programme (and change of Director) the GTA finished and did not cover the final stages of research – substantial interaction however continued as the research continued on an ad hoc

basis to provide lectures (including on revision trips aboard). Throughout the research interaction was not always in formalised research setting and as such gave rise to opportunities for casual conversation, during which views and opinions were often stated in anecdotal, conversational context but which often added insight and value to the research data. In such situations the researcher endeavoured to record the comments through contemporaneous note taking, with the permission of the subject to do so and sought formal permission to use the quotes in the research, with the subjects initialising their consent on the contemporaneous notes taken, since it is not possible to send them an audio record for approval. The attribution of quotes has been done in the same manner as described below for research data formally gathered through interview and observation.

Notwithstanding the very low risk of harm anticipated, as with any kind of research there remains some level of ethical considerations to be taken into account. Following Evans and Jakupiec (1996), since “education is a fundamentally social activity” and will involve human subjects, the researcher must have regard to “preserving and protecting the human dignity and rights of all subjects in a research project” (Shenfield, 1994:10).

Ethical associations in different research fields have in the past two decades, produced comprehensive, specific guidelines for conducting research in their individual speciality. For purposes of the present research, the ethical principles identified and discussed in social research is the most appropriate and shall guide best practice.

Following Diener and Crandall (1978), the main issues to be considered in social research are:

- The possibility of harm to participants
- The need to ensure informed consent
- The extent of invasions of subjects’ privacy
- The use of deception on the subjects

Guidelines provided seem to suggest that the latter three elements relate to and affect the existence and extent of the first element, the possibility of harm to the participants. The Association of Social Anthropologists of the UK and the Commonwealth and the British Sociological Association advocate that harm to research participants can be greatly reduced, if not eradicated, if the researcher were to ensure minimal disruption to the participants’ usual environment, while seeking to maintain confidentiality of the participants’ personal particulars and data and obtaining and maintaining records of freely given informed consent from participants prior to any incidences of data collection. The use of deception in social research has also been recognised as occasionally necessary in social research, but such usage has to be kept to a minimum and in instances where data collection may not otherwise be possible. Deception should never be used if the subsequent data or findings were to place the subjects at real risk of harm to life, limb or liberty.

Unlike practical medical research, the current project is very unlikely to result in any physical harm to the subjects. However, harm is given a broad definition and may occur even without physical interference. Harm to research subjects may occur as a result of the research process or by the final research product and the harm although not physical in nature, may be detrimental to the mental, emotional or professional well-being of the subjects or may adversely affect their professional or social standing.

The research process has been previously described in the methodology. It is difficult to envision any harm resulting from the research process to the subjects. There may be inconvenience caused to the subjects by having to take time out and make themselves present for the purposes of interviews. This inconvenience was minimised by ensuring that interviews took place at a time and location that was agreeable to the subject, which on most occasions was at the place of their work or close to their place of study since they were already present there for their own purposes.

The final research product will be the publication of the doctoral thesis which is a public document, recorded and kept in the university library archives. Also, the UOL external laws department which has provided GTA funding for part of this research may utilise the findings to inform future policy, however, at this point, the researcher is not aware of any plans or future intentions of the UOL ULP with regard to the eventual research findings.

Ethical considerations relating to the UOL ULP, subject heads and examiners

The identity of the members of the UOL ULP working centrally in EISA (now International Academy) are on public record on promotional material for the programme, including prospectus distributed to potential students at marketing events and on the official website. As such, it was easy to approach them directly to explain the nature and scope of the project and request their participation. The members of the UOL ULP team were given assurance that participation was entirely voluntary and the choice of whether or not to participate and any subsequent data collected would not in any way affect judgement of their job performance. This was verified by the research supervisor, who was at that time Director of the ULP. Members of the ULP shall not be individually identified by name or job designation if they so request it, however, they were made aware that the possibility of identification from the resulting data is high considering the small number of department members and the specialised nature of each individual designation.

The subject heads and examiners consist of academics from the law faculties of the six UOL colleges that form the laws consortium as well as academics from other British universities. Their names, addresses and contact numbers and places of employment are provided in the list of examiners and the list updated annually and circulated amongst them and certain staff members at EISA/London Academy for administration purposes in conducting the examinations. As a subject examiner, the researcher is privy to this list. The subject heads and examiners were contacted individually and asked for their permission to be interviewed after being given an explanation of the nature and scope of the research. No ethical violation is envisioned in this as their identity, contact and employment information are not actually being used as research data but merely as a means of establishing contact. Most interviews lasted around an hour and permission was sought for willingness to participate in a follow up interview if it became necessary through the course of the research. The interviewees were informed that the data provided may be quoted in the research but that individual examiners names will not be provided in order to minimise the possibility of harm resulting from the research product. Due to the subjective nature of qualitative research, there is always a range of possible reading and interpretations of the collected data. The possibility of misinterpretation of an interviewee's words or candid anecdotal observations may give rise to a challenge of an individual examiner's assessment processes or teaching pedagogy, or in the extreme, an individual

examiner's capability and integrity. While it is accepted that research may shed light on flawed processes, it is not the intention of the researcher to highlight any individual failings.

Ethical considerations relating to third party institutions

The research is confined to at least two and at most three main institutions in the identified target countries. What is classified as a main institution is contingent upon the number of students registered at the individual institution relative to the total number of UOL external laws students in the particular country. The number of UOL external laws students in each country is obtained from EISA registration records and the number of students registered at each individual institution was verified in two ways. First, was by asking the individual institutions for their student numbers and their figures could then be verified with EISA. This verification may not be entirely accurate as only Diploma in law students are required to state in their UOL registration form that they are studying at an approved institution. Students who are registered on the undergraduate or graduate routes are not obliged to provide that information, however, it has been the researcher's experience that most students do provide information of their institution when registering on the programme and registering for examinations.

The names of the institutions and the identity of the management and teaching staff who work in them have been kept anonymous and only their country and designation will be mentioned in data quoted in the research. The institutions targeted were sent a formal letter asking them for permission to be used as a research subject and this was followed up with a telephone call to the institution head for the same purpose. The request for permission both in written and verbal form stressed that participation in the research is entirely voluntary on the part of the institution and their staff. The researcher is aware that several institutions and certainly those identified as main institutions are – since post 2008 - given official status of recognition by the UOL confirming their status as tuition providers for the program. It is recognised that the official status of recognition is an important factor in the business of being a third party tuition provider for the programme as students are more likely to seek tuition support from a provider that has been vetted by the university. As such, care was taken to make clear the understanding to the institutions head and staff that any refusal to participate or any data resulting from participation as a result of observation and/or interviews would not in any way affect their existing or future relationship with the university. This understanding could be given by the researcher as the university has in place an independent process (official inspection visited arranged by Corporate and Performance Quality directorate of EISA/International Academy involving subject specialists and general academics from lead Colleges) by which third party institutions are scrutinised and any changes made to status of recognition could not be affected by activities conducted or information obtained outside of the independent process. As discussed previously, any potential interview subject working in the institutions were also individually asked for permission to be interviewed and provided with an explanation of the nature and scope of the research.

A potential ethical conflict was considered in the event that the owner/Head of an individual institution was unwilling to take part or allow the institution and/or its staff to participate as research subjects, but individual staff members within the institution may be willing to participate. In such an event, the decision was made that no research was to be conducted despite willingness and permission from the individual in order not to

cause any internal conflict or misunderstanding within the organisation. In any event, this situation did not arise during the course of the fieldwork

Ethical considerations relating to the students

As discussed previously in the section of the research process, students were selected from the main institutions in each of the target countries. Five students were selected from each institution, two from the first year, two from the second year and one from the final year, although in some instances there were more student volunteers. The method of selection of the student subjects was dependent on the institution. The institutions who agreed to participate in the research were asked to identify five of their students who they think would best fit the research criteria, which required the students to be broadly representative of the typical student demographic of the particular country. This determination was to be made by the institutions using their local knowledge of the student demographics

The institutions were requested to give their selected students a brief explanation of the research project and convey a request to give their names, email addresses and telephone numbers to the researcher. It was envisioned that the institutions would seek from these students a preliminary agreement that they would be interested and willing to be contacted for research purposes but that such permission is not final and full permission would be sought by the researcher personally after a full explanation of the nature and scope of the research (in any event interaction was often not as formal as this).

Upon contact being initiated by the researcher and the students given an explanation of the research, full permission for them to be research subjects was sought. It was made clear to them that although they have been nominated by their respective institutions, permission was being sought from them as individuals and would have no bearing on their existing or continuing relationship with their institution. Any refusal to participate was accepted without the need for explanations and in no way would it reflect on the institution who had nominated them. The potential student subjects were also informed that if they refused permission, other suitable candidates would be approached.

The students were also advised that they would be asked a series of questions relating to their experiences with different aspects of the programme they were undertaking and their experiences as a student of their institution. The student subjects were requested to answer the questions as candidly and truthfully as possible. It is envisioned that some of their answers relating to their experiences may be negative, either towards the university administration, programme administration, support or assessment or towards their institutional support. Care was taken to reassure the student subjects that although their answers may be quoted as part of research data, their names and institutions will not be identified, only their year of study and country. They were also given the undertaking that if they were to mention anyone by name, whether that person is a staff member or representative of the UOL or a staff member of their institution, that individual will not be identified by name in the research data.

Despite these measures, the question must be asked whether it is at all possible to determine whether the students are in a position to give fully informed consent. According to the Statement of Ethical Practice issued by the BSA: "As far as possible sociological research should be based on the freely given informed consent of those

studied. This implies a responsibility on the sociologist to explain as fully as possible, and in terms meaningful to participant, what the research is about, who is undertaking and financing it, why it is being undertaken, and how it is to be promoted". The researcher is able to ensure this is done once contact has been made with the student as described above.

However, initial approach made to the students to take part in the research was taken by the institutions. The researcher has no control over the form of such approach and the extent and quality of the information provided by the institution to the students about the research purpose and scope. This may be remedied to a certain extent by giving a full and precise explanation of the research once the researcher has made contact with the students, and again in brief prior to the commencement of the interview with the opportunity for the students to clarify any doubts. However, the researcher will not be privy to the nature of the request for participation made by the institution and any information provided by them and the extent to which such has influenced the decision of the students to participate. It is certainly possible that there may be elements of inducement or coercion. It is not deemed appropriate for the researcher to ask the student subjects whether they had been subject to inducement or coercion to take part in the interviews as that may cause more harm by jeopardising the student's relationship with the institution.

It is envisioned that the possibility of inducement or coercion is very much reduced by making clear the purpose and scope of the research to the institutions in the first place. By ensuring them that the research intends to shed light on current practice and perceptions, but does not intend to hold up a single institutional practice or perception up for scrutiny or criticism, it is hoped that the institutions will not feel the need to manipulate student selection for the interviews.

The possibility of taking the informed consent given by students to submit to classroom observation as being freely given at face value is also considered. As described previously, while an announcement is made before the start of the class about the scope and nature of the research and the purpose of observations, time constraints mean that a fully detailed explanation may not be possible. While the students are assured that if any of them do not consent or are not comfortable with being observed, they have the right to say so and observation will cease or not commence at all. Full assurance is also given that no student will be made to miss a lesson due to their not consenting to being observed.

However, it is possible that there may be students with reservations but who did not feel comfortable with voicing those reservations for fear of being judged by their fellow classmates or the institution as being uncooperative or paranoid. It is also possible that such reservation may cause the students to modify their natural behaviour during the session and thus not be able to participate naturally in the classroom setting as they would have normally done, thus not gaining the full value of the particular lesson. This is minimised by the researcher's positioning and conduct during the observations. Care was taken to ensure that the researcher sat in a corner at the back of the classroom so as not to be seen by the students and to not pose a visual reminder or distraction.

The possibility of harm resulting from the research product is slightly tempered in the case of the student subjects and by the time the research is submitted as a PHD dissertation, the student subjects would either have completed their course of study or

will be in the final stages of it. As such, even if the research data acts as the prompt for any changes to the structure, content and assessment methods of the programme, it will not affect them. The UOL ensures that any changes to regulations are introduced prospectively not retrospectively and all efforts are made to ensure that existing students are not subject to any changes in expectations of the programme that they have originally embarked upon.

Chapter Three

Culture and Identity

3.1 In search of culture and identity

It is apparent from the research data contained in this chapter and others that history is an important feature to grasp the overall context of the External System/International Programmes and with which the particular characteristics of the ULP. A 'history' of the system and the programme up to the point of research is attached as an Appendix. Given the history, the researcher engaged with and was a participant in a research field in which issues of culture and identity were constantly being fought over and differently interpreted. Accepting the fact of diversity of students and the large number of students in a range of countries is the programme given coherence and stability by an ascertainable culture and settled identity? The question then becomes identity as and of what? In conducting this research it became clear that 'normal' issues of identity – University, Faculty, School, Centre and so forth, along with the tensions associated with that, simply do not apply. Once development from an examinations process and the language of distance learning was adopted – along with the Laws Consortium – occurring in the context of the transformation of UOL from a strong unitary centre to the current state of almost fully autonomous colleges then Identity was contested. So how, if identity is problematic, is coherence achieved? Is it given by a culture that allows for commitment and convergence in the face of a lack of institutional belonging? Or put another way, are cultural beliefs sustaining the programme as a 'community of practice' located as an intersecting set of actions, operations, presences and absences?

First how and why is culture used? Valimaa (1998:119) champions culture as a framework for social research as it provides a "conceptual bridge between micro and macro levels of analysis". A model of the use of culture and identity as a framework is Cownie's (2004) *Legal Academics: Culture and Identities*, which in turn was inspired and informed from a reading of Tony Becher's (1989) seminal thesis *Academic Tribes and Territories: Intellectual Enquiry and the Cultures of the Disciplines*.

Becher's work in turn was a response to Snow's (1959) assertion that academia can be polarised into two separate sets of cultures determined by discipline. Snow (1959:2-3) asserted that the culture of the scientific scholar and the culture of the literary or humanities scholar was so divergent that while "comparable in intelligence, identical in race, not grossly different in social origins, earning about the same incomes... [they] had almost ceased to communicate at all, [and] in intellectual, moral and psychological climate had so little in common that instead of going from Burlington House or South Kensington to Chelsea, one might have crossed an ocean". The divergence in cultures and lack of communication and understanding, according to Snow (1959) stems from differences in the nature of the two general fields of discipline.

Becher (1989) rejects this assertion as being overly simplistic. He contends that academics occupy communities influenced by both epistemological and social factors (Valimaa, 1998). Using Kolb's (1981) system of classification, Becher (1989) identifies four categories of disciplines, namely: hard pure knowledge, hard applied knowledge, soft applied knowledge and soft pure knowledge and states that these categories do

not stand in isolation but demonstrate areas of overlap and divergence. Becher (1989:16) argues that: "...the boundaries between the hard/soft, pure/applied knowledge domains cannot be located with much precision, and even when they have been staked out, several of the established disciplines fail to fit comfortably within them. It is all very well to group together, say, the social sciences and humanities, as one more or less homogenous category of soft pure knowledge; but to do so is to brush aside the differences between and within their constituent subjects". Further Becher (1989:24) states that social tools such as "professional language and literature of a disciplinary group play a key role in establishing its cultural identity. This is clearly so when they embody a particular symbolism of their own (as in mathematics and theoretical physics), or a significant number of specialised terms (as in many of the biological and social sciences), placing them to a greater or lesser degree beyond the reach of an uninitiated audience. But in more subtle ways the exclusion also operates in those disciplines ...which pride themselves on not being jargon ridden, since the communication here none the less creates what linguists would call its own register... which is not easy for an outsider to imitate". Besides patterns and style of communication, there can be convergence and divergence in terms of career progression, work locations, research practices and reactions to innovation and controversy. Thus, there can be several types of cultures within a single discipline each influenced by factors beyond the fact that they are a science or humanity.

However, Becher (1989:4) acknowledges that his work is not meant to be definitive and is limited in certain areas. He concentrates on academics in terms of their activities in research rather than on teaching and learning and also there is a very limited consideration of the influence of external contextual issues. Furthermore, Becher (1989) concentrates on a study of academics in twelve disciplines representing a cross section of the four categories defined by Kolb (1981), thus he is unable to do an in depth analysis in each discipline. Cownie (2004:9) builds on Becher's thesis with the aim of uncovering the complexity of the discipline of law as it is taught and researched in contemporary universities "as an attempt to reveal aspects of the nature of the academic study of law which do not lend themselves to examination by other more traditional methods of enquiry".

However, the use of disciplinary culture as a frame work for the current research is not appropriate. Following Valimaa (1998:126), the aims of research in disciplinary cultures is to understand the differences and similarities in cultures within the various fields of academia in order to bridge the gap in the perceived divide between the sciences and the humanities. Cownie (2004) has sought, with considerable insight, to use culture as an organising concept to observe legal academics in English universities, but, without directly following her, the current research is suggestive, rather than conclusive, as to how the discipline of the law helps shape their behaviour in the programme. A strong caveat: interview data, and participant observation reveals that the role of individuals in the programme is either so fragmentary (i.e. examining for a period of six weeks, contributing to a subject guide, doing occasional lectures, being a Chief Examiner [CE] and thus preparing examination papers while being based in a college elsewhere) or when full time staff were appointed a mixture of academic/manager/administrative/liaison etc, in a real sense the only thing in common is their participation in the (academic) discipline of law, rather than any institutional affiliation. The UOL itself has changed from being a unitary structure to being a loose academic/administrative infrastructure with the colleges now being virtually autonomous (with LSE awarding

their own degrees and Queen Mary from 2013-4) and a rump administration located in Senate House with the International Academy located beside Senate House at Stewart House.

Williams (1983) acknowledges that culture is a broad concept capable of fluid interpretation. Sackmann et al (1997:25) regard culture as “explicit and tacit assumptions or understandings commonly held by a group of people; a particular configuration of assumptions and understandings is distinctive to the group...(and) serve as guides to acceptable and unacceptable perceptions, thoughts, feelings and behaviours; they are learned and passed on to new members of the group through social interactions; and changes over time, although tacit assumptions that are the core of culture are the most resistant to change”. In this sense culture is something that reflects a group’s existence and also forms the background against which the group operates; it influences the actions taken by the group, it guides outsiders on appropriate behaviour for entry into the group and facilitates interactions within the group.

The use of organisational culture as a framework for higher education research has also been championed by Tierney (1988: 3) who states that: “Institutions certainly are influenced by powerful, external factors, such as demographic, economic, and political conditions, yet they are also shaped by strong forces that emanate from within. This internal dynamic has its roots in the history of the organisation and derives its force from the values, processes and goals held by those most intimately involved in the organisation’s workings. An organisation’s culture is reflected in what is done, how it is done, and who is involved in doing it. It concerns decisions, actions, and communication both on an instrumental and a symbolic level.” Tierney (1988:5) further contends that: “...properly informed by an awareness of culture, tough decisions may contribute to an institution’s sense of purpose and identity. Moreover to implement decisions, leaders must have a full nuanced understanding of the organisation’s culture... (which may) occur at many levels, within the department and the institutions, as well as at the system and state level. Because these cultures can vary dramatically, a central goal of understanding organisational culture is to minimise the occurrence and consequences of cultural conflict and help foster the development of shared goals.” Thus Tierney (1988) advocates that organisational culture be used as a framework to understand how an organisation operates and the significance of its actions and interactions.

The framework suggested by Tierney (1988:8) consists of six general areas of concern with specific questions within each area. The six areas are:

1. Environment
 - How does the organisation define its environment?
 - What is its attitude towards its environment?
2. Mission
 - How is it defined?
 - How is it articulated?
 - Is it used as a basis for decisions?
 - How much agreement is there?

3. Socialisation
 - How do new members become socialised?
 - How is it articulated?
 - What do we need to know to survive/excel in this organisation?
4. Information
 - What constitutes information?
 - Who has it?
 - How is it disseminated?
5. Strategy
 - Which strategy is used?
 - Who makes decisions?
 - What is the penalty for bad decisions?
6. Leadership
 - What does the organisation expect from its leaders?
 - Who are the leaders?
 - Are there formal and informal leaders?

Valimaa (1998:130) sees this approach is “internalist” and to an extent it treats the programme unit under study as a single social entity and downplays its interaction with its social environment. These questions are for this research highly suggestive for each question opens up in turn issues of identity: during the period of the research, questions of who made the decisions were contrasted with the (QAA?) issue of who signed off the decisions. This became a power play between the academics of the programme and the committees and ‘administrators’ who ‘supported’ the ‘higher’ committees. We should also note that under Tierney’s (1988) framework, no mention is made of the organisation’s targeted audience/consumers, in this case, students, outside bodies, the colleges, prospective employers and so forth. Ethnography of the ULP would certainly not be complete without analysis of the students of the programme. Crucially, owing to the unique structure of the programme, the interplay between the programme and independent third party institutions must also be considered. As stated previously, such institutions operate in a realm which is acknowledged, but only partially recognised by UOL as part of its environment. In turn, these third party institutions have their own organisational culture and are influenced by their social environment.

Thus, while the above question could help reveal and analyse part of the organisational culture of the ULP, to bring out a larger picture would involve what Valimaa (1998) terms as an “interactionist” cultural approach. Valimaa (1998) argues that culture is not only contained within an organisation or institution but includes and is influenced by the organisation’s interactions with “significant others”. As such, Alvesson’s (1993) understanding of organisational culture that is most appropriate to the current situation, namely, a “multiple cultural configuration view” which proposes that organisations can be understood as shaping local versions of broader societal and locally developed cultural manifestations in a multitude of ways. “Organisational cultures are then understandable not as unitary wholes or stable sets of subcultures, but as mixtures of

cultural manifestations of different levels and kinds. People are connected to different degrees within organisations, subcultural units, profession, gender, class, ethnic group, nation, etc; cultures overlap in an organisational setting and are rarely manifested in pure form. It is especially important to keep in mind the existence of cultural traffic – that organisations are not cultural islands, but are affected by societal culture” (Alvesson, 1993: 118).

But who the relevant “significant others” are, is open to contestation. This in turn, necessitates the organisation and its individual members to be aware of their own identity and the forces which impact upon it. Following Taylor (1991), the nature of identity is a continuous dialogue between one and relevant significant others. Cownie (2004:13) states that: “Identity describes the interactive processes between an individual and structures, or institutions”. As such, identity is not something that is stagnant but may change depending on interactions. But, does UOL’s ULP as an organisational unit have an identifiable identity, and if so, what sort of interactions impact upon it?

3.2 Programme Identity

Following Valimaa (1998), identity boils down to the existentialist question of “Who am I?” and “Where do I belong?” Before examining these questions in relation to interactions with others, it is prudent to question what one’s personal motives are. While motivations may fluctuate depending on interactions with others, every individual or organisational unit embarks on a mission with an intention. Using Tierney’s (1988) cultural framework, a mission statement is an integral part of its culture and arguably, its identity. Using the questions above what can we see of an interaction of individual and organisation, and who or what is/are each?

Thus this first sections of interview data comes from perhaps the three most significant figures of the last 20 years for the programme, **TH** who was the first programme director and retired in 1999, **WM** who was programme director during 1999-2009 and **IY** who was and continues to be a Chair of the Board of Examiners. The interviews were constructed to bring out material on ‘who am I’ and ‘where do I belong’ and ‘what am I doing here’.

TH

Q: Can you tell us a bit about your background up until you joined the external programme?

A: *“I became an assistant lecturer at King’s in 1959 and from 1961, I was involved in examining, which in those days meant you were automatically involved in examining for the external as it was a common set of examinations. .. In 1968, I became sub dean of the faculty at King’s and I acquired the chairmanship of the LLB board of examiners, because at that time it rotated around the colleges and at that time it was King’s turn. Then within a couple of years, the system of the common examinations disintegrated and all that was left was examinations for a year or two through King’s with the External and then King’s, Queen Mary and the external. Since the other colleges were no longer involved they no longer had an interest in taking over the chairmanship, with the result*

that it sort of became a permanent chairmanship, and I held it then from 1969 until I retired. But it was an accident..."

IY

Q: How and when did you first become involved in the programme?

A: *"When I started teaching here (QM) in 1966, the old system was coming to an end where there was one set of LLB regulations and one set of exam papers for all students, external and Internal. ... But up till then, the external students, just like the external LLM, were just external students who just happened to sit the London [examination] papers. And there was almost an expectation that if you started teaching that you would examine and people had been examining as part of their normal duties. So I started marking Roman Law, which was a compulsory 1st year subject".*

Q: For Free?

A: *"No, No, we got paid extra... Gradually, of course, the expectation that people would mark died away as it became clear that you were marking for another system".*

Q: How did they get examiners in those days?

A: *"It had been the case of course that one simply did examining of external students as a consequence of examining for the internal students ...Roman Law was a problem as there was a diminishing number of people who could mark Roman Law, but for the other subjects, they were the people in the colleges... I am sure that the great majority [of external students] were home students [i.e. sat examinations in the UK] as the overseas market was quite small, and a large number of them were studying in Polytechnics. Lots of polytechnics, before the CNAA came into existence offered the London degrees and taught for us to examine their students; they were enrolled for London Exams. And a number of the staff at polytechnics were appointed to the board of examiners and they would attend the meetings. But there were no specific study guide or feedback from the examiners at all. It was purely an examining system".*

WM

Q: What was your first involvement in the ES?

A: *"I joined Queen Mary in 1989 and was teaching jurisprudence, tutoring in Land Law and was doing Criminology on the intercollegiate LLM. The salary was low and a senior lecturer knocked on my office one day and said 'do you know anything about the external? I think it would be a good idea if you came on board and you could certainly mark English Legal system and Jurisprudence'. So I joined the board... Then another member suggested me to do some of the evening and weekend classes. I found them amazing: a class that people paid to come to, and so mixed!!"*

Q: What were the particular challenges?

A: *"You could not take anything for granted; in the room might be the son of a leading lawyer from the West Indies who did not have good enough grades to get into UWE or a good UK University with a retired individual who was an engineer or a doctor before... My first lecture in jurisprudence taught me a lesson. I was engaged to do a one*

evening class that was I think about 2 1/2 hours on sociology of Law and I made use of Donald Black's book *Sociological Justice*; now Black was an arch positivist statistics, statistics, statistics, look at the empirical picture of law and he had some statistics about the death penalty in the US and how in certain states a black defendant had a much higher chance of the death penalty than others and in all states the black defendant had a much higher chance than a white defendant. I had summarised this and ended my class with a flourish 'so that's justice then..., sociologically speaking'. I meant of course to say that one must always bring out the contrast between justice as a transcendental ideal and the messiness of lived empirical life! But a few days later I got a call from F, who was an administrator originally from Nigeria and whom I got on well with, to say that a student was trying to organise a petition against me and claiming I should be banned from teaching on the basis that I was a racist. I then heard from another source that subsequently there had been an altercation between two students both from the West Indies because the petition organiser had written down that I said 'it was just to hang black people more than whites', while the other had written down that I said 'statistically there were great imbalances in the application of justice between whites and blacks in the US'. After that I encouraged people to bring voice recorders to class!!

Later that year was an e-mail sent round to all teachers of jurisprudence in the colleges asking interested people to a meeting about the future of Jurisprudence on the external. I went along with our lead professor from Queen Mary and there were about seven people in the room. Apparently the University was trying to produce basic subject guides and the chief examiner in jurisprudence had refused on the grounds that the major text was sufficient and that students should simply be told to read that. There was quite a discussion and it was then agreed that jurisprudence was so important for the University of London - after all we had the heritage of Jeremy Bentham and it had been the lectures by John Austin that were the first lectures in law in the University Mark I - that two people from different colleges should become Chief Examiner (CE) and Deputy CE. So XX from UCL became CE and I became DCE on the understanding that we would produce an exam paper that would reflect diverging interests. Yes, that was the agreement! We were to be a team on condition that we were different!

A year or so later I got a call from someone who was organising a revision trip to Malaysia...The experience was amazing. I had prepared in depth, spending the time over Easter reading the entirety of John Austin's lectures - when I took the book out the Queen Mary library the last person to take it out had been about eight years ago - Dworkin's *Laws Empire*, Hart's *The Concept of Law* and I took two books of Kelsen with me. I had to do around 24 hours of classes in a week. The class had around 80 people and I only had three pages of outline to give out. At QM when I gave a lecture I would look up and see of the 150 to 170 students perhaps 5 looking at me, the rest would have head down busy taking notes. But here [in KL] I would stand there three hours at the time, often trying to get students to reply to questions I asked them, and see around 75 faces looking at me and perhaps four or five taking notes. Each day I tried to assign some reading for them to come back with the next day and discuss but it was mainly me. At the end of the week I received a standing ovation but immediately afterwards 4 or 5 students came up to me and asked me for the notes. 'Notes', I said, 'but I have been talking for a week, you should have made plenty of notes!' The response was immediate: 'oh no Sir, in Malaysia the lecturer provides notes. At [rival

institution] they have been given 3 1/2 kilograms!' Ah... I coined it the supermarket theory of education!

But I was hooked. The institution asked me to come back early in the next year and I also had friends working in the NZ High Commission with whom I would stay with after the teaching stint: I went 2-3 times a year from then onwards. KL became my second/third home".

Q: Was it money?

A: *"No, the money helps... but it was very much also the fact of a relationship I struck up with JR who was the chief administrator who ran Brickfields. At least twice each trip we would meet at a bar and talk about the students, their situation, UOL etc. I did not know the term then but we were doing pedagogy. We would talk for hours then go to a Tamil music bar and then, maybe 4am or so, we, or I, would go and drink Bak Kut Teh [a Malaysian herbal pork soup] and military Guinness [9 %!!]. You could not, at least one did not, do that in London. One did not talk about education at college you just did it!!! Only in KL did I ever think about the process of teaching and learning... which I now consider facilitating and learning/constructing...*

KL became my place... J encouraged me to publish the lectures as a local book... Then I wrote my large book on Jurisprudence, which I put in the preface was written in KL, Athens and London.... But the originating theme was the fact that no external student seemed to ever consider that maybe Austin was right in many respects and Hart was simply the product of a particular historical period, i.e. post-WWII England when people wanted to believe that a municipal legal system was an interactive system of rules! But out there, where the students were, they knew that law was about power, about humans beings being screwed over!! Legally!!! But why, why, did they not put that understanding in their examination answers?"

Q: Ok, but how did this experience take you into becoming Director of ULP?

A: *"For us examiners the programme did not exist except as a series of letters or occasional phone calls inviting us to do one or another thing – such as give a lecture. I attended the examination board, God!! My first one lasted from 10am to 7.30pm!! But afterwards some of us went to a bar... and then, for a brief period, you might say we were a group or a community... we drank and talked about the scripts we had marked, and if we had given any lectures... a lot of talk was swapped and we made some progress (in our minds) at changing the external... after then next day the reality of life at College took over... [and we did nothing]*

Then in 1999 a message was sent round that TH, who had been director part-time, was retiring and that they wished to appoint a full-time director by secondment preferably. I talked to people who said 'come on, you have been complaining... why don't you put your body where your mouth has been!' So I went to see my head of Department and I remember the scene well. He looked very apprehensive but when I said that I was thinking of taking up director of ULP he looked so relieved: 'My God', he said, 'I was afraid you would tell me you are going to Birkbeck! Yes, the external you could do well there and do well for this college as well!"

Q: Was there much of an application processes?

A: *"A CV, a letter of interest: then lunch with the director of EISA and the deputy director, who was supposedly in charge of developing teaching and learning. Lunch was very nice but I still remember that JB [the deputy director] was highly concerned with the use of language. I was, apparently, never to say that we engaged in distance learning. Instead I was to say that our students learn at a distance! This difference seemed incredibly important".*

Q: Why?

A: *"Later I realised that [the perception was] if the external system claimed to be doing distance learning then they would be covered by certain precepts of the QA code of practice and would be drawn in to a whole sphere of oversight that it felt it could not cope with. Additionally, clearly it didn't have the resources in place, at least for the major undergraduate programs, to in anyway constitute distance learning. There were just a syllabus, very small subject guides, extensive regulations, and very tough examinations".*

Q: Do you have an induction into your role and where were you located?

A: *"Well... I was given an office... and I had the support of one person... MCB... as to induction, it was thought that I had been part of the system, was keen so get on with it. We need a commitment etc., etc. But there was no one to actually talk to about what academically the laws program could become. I was simply one person in the midst of an administrative environment. Then I fought over little things that I thought were very important..."*

Q: Such as?

A: *"Soon came along a memo requesting me to fill out a day/week time sheet and a leave application form and have it signed off by the deputy director. Not only did it appear to suggest that she was my Boss but the form took for granted that one worked from 9 in the morning until five in the evening, but I have never worked that way in my life. Some days I work 20 hours then the next day I go to a museum, go for a boozy lunch, and resume the next evening let's say at 10 o'clock! Moreover the categories gave no allowance for research ... I contacted my Head of Department who said: 'tell them to ***** off!', which I was going to anyway, so I came in on Saturday and spent eight hours constructing a 5 page memo explaining why I would not do as they asked.... This was apparently sent to the University Lawyer – himself a graduate of the ULP– and coincidentally I also contacted him for advice of my status as I wanted to know who was responsible for insurance on OS travel etc. His reply was that I was physically located within EISA but not of EISA... so I was in a 'special relationship'. In other words who was I, what was I, where was I, was all up for grabs. My argument was that I headed a programme on behalf of the six law Schools and was answerable to them... I accepted that I was administratively responsible to EISA and therefore the Director of EISA was my manager as to all things administratively but academically I answered to..."*

Q: Yes?

A: *"Well, I would say [to anyone who asked] the laws Schools, and the SSC [Standing Sub-committee of the UOL Subject Panel for Law] and I was happy to say I'll answer to*

the Vice Chancellor but I really meant... me... I mean I wanted to create... it was a void and I wanted to populate it, draw... make things happen..."

Q: And could you?

A: *"At first I wondered. At the first SSC the Chair, [XXX], was appalling, treated me as an upstart! I remember an item was whether payment to colleges should reflect participation and I asked how was participation encouraged? I pointed out that there was not a single examiner let alone CE from Birkbeck... had they been encouraged to participate? 'Birkbeck, came the response, 'do not do real law!' The evening, a member phoned me saying how embarrassed she was and what was I going to do to fight back. I said I would invite him out to dinner, her response was make sure at the next meeting you wear a suit with a white shirt and sit next to him, I said I think is a Catholic so I'll sit on his right side! Anyway I contacted him and suggested we meet the dinner a couple weeks later he said meet at his room at UCL and go locally. We went to this Italian restaurant near Russell Square which was a trip back to the 1970s, Formica tables and food with lots of oil but with good wine. At the end of the meal – which he insisted on paying - he said: if you're really going to try and make a difference first thing is to get yourself an expense account because with your ambition you are going to need to take people to lunch often as there is nowhere else to meet them and with your style you might make it happen! Which I took to be a kind of vote of confidence... At the next SSC I wore a suit with a white shirt and sat on his right – but no tie – and invited him out for dinner. His whole approach was totally different, and he kept saying in a differential tone, will you be considering this? Is this something you think you can take on board? If you are considering reform I'm sure this committee will support you... etc."*

Q: Did development happen? How, who was in control?

A: *"There was no budget, no real environment but the External System had built up significant reserves – mostly from the ULP which had a terrible financial split where the colleges got virtually nothing and the ES took nearly all the profit – and it was time to disburse them. I was told from other sources that word in the colleges was that there was easy [development] money to be got, just present an ideal programme and you will get £100,000s. And so it seemed £600,000, there £500,000 there... I went to see the Director of EISA with a detailed proposal that asked for £360,000- clearly specified; he said no, only £300,000! I said why? Because that is what [XXX] the Director of the other big programme from the LSE is getting! But the LSE got a fee split, they were getting several million anyway, Laws was only getting around 80,000 per college!!"*

When I pressed him he was honest, it would be decided at the External System Lead College Committee (ESLCC) I did not have a lead College behind me! Because Laws was a loose 'consortium' [the words was only recently being used] there was not sufficient financial interest for a Principal or Vice Principal to harass him or the Vice-Chancellor. So £300,000 it was; but I held it, I now could innovate".

Q: Was that difficult?

A: *"There seemed a lack of confidence. At the next SSC I proposed and got agreement that we would 1. Rewrite for the next academic year the 4 Intermediate/1st year subject guides and 2. Provide one text book per 1st year course, and 3. Raise the fees only to cover costs and a small margin. I remember being in my office the next day having coffee with my colleague – who had only recently been appointed as Distance Learning*

Advisor- and the deputy director of EISA rang to say she had read the draft minutes and there was no way she could agree as academics would not revise the subject guide in time. She went on and on, and I put it on speaker, put my feet on my desk and looked at my colleague... 25 minutes I think she spoke (ranted) for and I gave an occasionally grunt into the speaker, it was it cannot be done, it cannot be done... then it was that publications did not have it in their schedule... after 25 minutes I simply said yes, I will take that on board, which she may have thought I agreed with her but really meant I would proceed...

I went to publications and they said they could not do it...so I rang my publisher and got a quote for doing it outside, we would independently edit and publish it and bill the ES .. Of course that was a gambit... Suddenly [when I came back with an outside cost quote] it was possible but still it was expected that the academics would not produce the material..."

Q: what happened?

A: *"We produced! And a demarcation was made..."*

The accounts of others reveal similar patterns of joining the programme and socialisation.

"Then I got this job here at UCL in 1975. One of the things I noticed was that quite a few colleagues were making money out of this thing called the external LLB and when you're young and you're in London you want to make money. I was partly drawn by money. But there's also another feature in my background... my father had been taken prisoner early in WWII and taught on the external London law degree (and economics degree I think) in an Italian prison camp in North Italy and also in a German prison camp for getting close to three years. It was the biggest prison of war camp.

In both those camps the Red Cross would send out examination papers from the UOL, then take them back and they'd be marked and people actually got degrees while they were in the camp or they got parts of degrees which came with them when they had the certificates. They could go back to England and finish off the degrees at different places which were prepared to grant the UOL external courses as part of it.

I was a bit motivated by that... I've always been ... influenced by my father. But I was always struck by this external idea, I love the idea that you could be working on your own - with help from other people but really working on your own, given the books, looking at the previous exam papers, having the complete motivation to make the very best of yourself and in the best sense of education which comes from the Latin educare, draw what's in you out. It's not just technical training.

I just found it a very attractive idea, the idea that you weren't just cosied through your degree, mollycoddled or spoon fed through your degree. You become educated in your own right and the question was do you meet the standards? Yes, perhaps I had more faith in examinations then. On the other hand examining done properly is a skill and done properly I think it can test people to see what level of knowledge they've got.

I was motivated by that as well. Then I got more and more into it because I enjoyed doing it... you felt you were involved in something that was international and good. Then 1990 when I came to actually meet some of these people who were examining I got hooked by it.” (Former CE Jurisprudence and Evidence, former Acting CE in Criminal Law)

Accounts of those who examined in the 1980s pointed to it being a relatively easily understood extension of their college activities (albeit paid separately). At that stage it was clearly an examination system, with perhaps some limited opportunity to go on a revision trip, and for a couple of years later in the 1990s to do visiting lectures at third party institutions in Hong Kong or Malaysia where the market was growing. Reform, or developing a distance learning programme, came in the 2000s.

Reform took at least three if not four steps:

1. The development of a committee structure and Quality Assurance mechanisms;
2. The development of learning resources;
3. The development of core staff for the EULP; and more problematic;
4. The development of a distance learning culture?

Regarding the first step, it is instructive to work through the narrative of the person brought in to the External System in 2001 to a post called Director of Academic Management and Standards to set up a robust QA system and when she left in 2008 was the Director of CPQ, that is Corporate Performance and Quality Directorate of EISA [the external and internal student administration). Previously, Head of Quality Affairs at Goldsmiths College where she had her first experiences with the ES since (Goldsmiths was a lead college for several programmes) she had central responsibility for the external provision of Goldsmiths. One of the Goldsmiths programme – computing science and mathematics - required recognised institutions where students could take the external provision. Her time in the post was marked by balancing conflicting tensions brought about by the structure of the External system model of distance education. As she stated: *“The recognition process was quite rigorous and managed by the lead college responsible for the programme. ... There was tension however, as you can imagine the London model caused some tension in the lead colleges... The tension in some part motivated by quality concerns and prompted questions about the unit cost of education. A student would pay thousands of pounds to study at Goldsmiths or Kings College, but an external student pays much less and still graduates from the course with what we guarantee is an equivalent degree. This caused some friction between the colleges and ES.”*

Q: What was your first impression upon joining ES?

A: *“I was attracted by the question ‘how does it actually work for the external? And a challenge... I thought the ES needed an overhaul of quality assurance. The ES was caught between two time frames of two distinct periods. It had operated as a central federal system, but in the late 80s, and continuing, as you know there was a breakaway. The colleges wanted more independence. The federal structure was breaking down but ES was still caught in that. Also, on the whole there was just a move towards being open for inspection, accountability and a need for public knowledge. In this respect the ‘new universities’ [i.e. the old polytechnics] had an advantage as they were familiar with audit. They went through all this during the transitions from*

polytechnics to new universities. Thus, they had a whole set of quality assurance processes in place.”

Q: What was the starting point for you in the ES?

A: “The starting point was to establish a framework for quality assurance in the ES. I started by looking at the systems and policies that were in place and who was responsible for what. The colleges are authorised to award UOL degrees and authorised to register internal students but not to register or award degrees to external students. The University, not the Colleges, was the awarding body for the degrees external students received. The whole mantra of QAA was [to stress] the responsibility of the degree awarding body to assure the degree that the students got was worth the paper. We had to articulate a system, work through a system, whereby we knew how we were managing quality and standards. That it was happening was and is not enough. We had to know HOW it was happening, that it was appropriate, and we had to look at what we needed to do to strengthen our ability to manage our responsibility. Laws was a particular challenge. It was outside the lead college relationship. ... I took as my starting point two principle things: [One was that] the reason we need to have robust [procedures in place] was that the students are distributed all over the world - some from very poor countries. As a matter of principle for me, and why I defended my turf strongly, is that those students were entitled to know that no matter how different their provision were and it is different, and, they were entitled to know, had the right to know that we were working on their behalf to establish systems and process that would assure the standard of the award they were going to get. ... Another was the need to have Colleges have confidence in us. We were trying to get the colleges to sign up to having this rather more articulated quality assurance framework that required people to do things in a certain way, that required [either central committees or] the committees in the colleges to be very aware that they are dealing with external matters and to take them seriously [or a mixture of both]. To make sure that people were doing equivalent things. [The question of quality assurance is] indivisible from that, it is the reputation of the university that is at stake... “

Discussions with the Laws team, other interviews and participation observation, reveals that QA is taken to mean two overall things to the participants. The first is to ensure systems are in place “for the interests of the students”. Although the ES was exempt from QAA as it received no Government funding there was general agreement with this respondent that “those students were just as entitled, whatever their degree provision, as students of UOL, and had the right to know that UOL was working to assure quality standards”. The second is as this respondent puts it “the reputation of the university is paramount. And if that reputation is harmed, it ultimately ends up harming the students. The value of their qualification is questioned”.

Interviews with this respondent and the then Director of ULP reveal a commonality of interest and yet divergence. This respondent sought to develop and articulate a system whereby UOL, which is the degree awarding body, had to be able to show how they assure quality and how they manage responsibility. ULP was seen as “a particular challenge as it fell outside the lead college model... the laws provision was still very much a federal programme. No individual college seemed to want to take the role of a lead college. What to do with laws?” Both her and the then new Director of the programme wanted change and both agreed that change could only occur if a new “constitutional” structure could be put in place through which change could be

processed and assured. The new Director put his desire somewhat differently: *"I wanted some form of active community, some mechanism to link in people, discussion, and involvement, but I was from a Law School. I wanted the Law Schools to own the programme"*, thus he seemed to fear *"central takeover"* before *"I had really created something"*. However, both *"wanted to engage with the laws community"* and agreed *"to have a review and look at possible new models of management."* This led to the *Douzinas' Report* (Douzinas was head of the laws subject panel, so the report was done under the auspices of the Laws subject panel and it was serviced by EISA).

The result of this report was a proposal to 1. Increase the monies going to each of the contributing colleges/law schools to c. £250,000 each (from c. £80,000 each), and 2. To put in place a new committee and quality assurance system with an External laws Committee (ELC, which in time became Undergraduate laws Committee, ULC) and sub panels for examinations, institutions, and teaching and learning. A Chair of the ELC and Deputy Chair was to be appointed from the law Schools and paid an honorary fee. The proposal was to go to the external system lead college committee. It is best now to take up the narrative of the then Director:

"We thought that we had a straightforward proposal that would be agreed easily. It was to be spoken to at the ESLCC by the then head of law school of the LSE (as he had taken up Chair of the Subject Panel). Late in the evening I received a phone call from him and he said things had gone badly. Representatives of other lead colleges had questioned why an increased division of money would go to colleges simply for a better QA arrangement. He described the meeting as the worst experience of his academic life... an expression like 'a pack of wolves scenting blood' comes to mind though I might be wrong. Looking back it was clear that we had made a mistake in presentation, instead of the language of partnership and a new model for a highly successful program it had been presented in terms that could be read as buying in quality assurance. As a result the new committee structure had been agreed but no extra money would flow."

Q: Why was it [the meeting] so bad?

A: *"He had been used to making presentations and proposals internally in an institution where of course the idea would be that the better the parts of the institution operated the better the overall. [But] here more money to go to law schools meant less profit to be divided up for new projects and perhaps programs that were operating at a loss would be called to account."*

Q: So what happened?

A: *"I went along with XX (the Director of EISA) to see the Vice Chancellor who was Chair of the committee. I put to him that the programme depended upon the partnership and that this was destroying any functional cooperation. The VC was quite explicit. He said he wasn't saving the money to wallpaper his apartment [there had been newspaper reports of several politicians spending money on refurbishing government accommodation at the time] and that we needed to think of the health of the University! In fact he was taking 5% of the total income of the ES is a special fund to distribute the project around the University, such as money being given to refurbish the rowing facilities of the student union; the profits of the ES seemed in part to be buying goodwill of the federal University was becoming unstuck. But the whole*

atmosphere made it clear that the laws program did not have political weight because it did not have a lead college. I tried to say that my project of transforming the laws program would be compromised as I would not be able to get goodwill from the law schools easily. He was clear: if the consortium would not work he would seek a lead college model, or, alternatively, as he put it, 'I could pay you £80,000 [a year] and you can hire 11 members of staff to make a magnificent program for much less of the price this proposal was going to cost'. "

Other interviews and participant observation have reinforced this tension, if the consortium cannot work then the UOL would look for a Lead College (with any money going to that College alone) or, the suspicion having set up the ELC that the central university of ES would now 'own' the programme. Having set up the mechanisms for change what would the identity of the developing programme become?"

3.3 'Identity' caught between central ownership of a shared project

IY:

Q: Once the ELC was created, was the idea of who "owned" the programme an issue? Was it the colleges, Senate House, the administrators or the academics?

A: *"[U]ntil the consortium was created, I don't think anyone had much of a sense of ownership. It was something that had just been there all along. Of course, quality assurance had become a much more focused discussion and that was partly why the consortium came about. The issue of who would provide the quality assurance and who wouldn't was important. There were battles in the early days as between the members of consortium as to how financial arrangements were to be made. The starting point was equality, but of course, there was no equality as to the contribution made by different law schools to the programme. I recall a particular SSC which was suddenly fully attended so that some representatives from colleges could vote against the notion that money should follow contribution to the programme! There was a substantial school of thought [in the Colleges] that this was [and could be much more] an important source of income, but less thought as to how the money should be earned. Some people in the colleges saw the external as detraction from the proper business of their academic staff. One of the motivations was the need for Law Schools to meet new funding requirements and if the external brought in money then to show that staff were doing these things. Certainly when I started, this was seen as very normal because you knew that UOL had external students and they would be part of the duties but it is not like that now."*

Q: There are six schools in the consortium, and each school has its particular "identity". Has the EULP adopted the identity of any individual school?

A: *"No, looking at it from the longer historical perspective I think something else has happened. ... There had been a single London law school emphasis in terms of its examining rules and the nature of its papers. Some of the characteristics of the external programme today were then subconsciously, sometimes consciously in the minds of senior academics in the law schools. Today it would be considered quite extraordinary if, for example, QM, as a junior compared with the original three biggest law schools and we wanted to put on a course in Social Security Law, if it would be a*

great battle and if it all had to be approved even though it was our own programme! But then everything had to be approved by the Board of Studies in Law. It was rather the opposite [from what the question implied]. The separate ethos of the colleges developed after the central control of the university diminished. In a sense what the external represents is a continuation of an older tradition rather than an imposition from one of the colleges. I suppose it is true to say the colleges that have played the most part in recent years are UCL and QM. And that has represented the more conservative tradition. And if you look to the character of the external, it is the old London model and for good or bad..." (Chair of the Board of Examiners, Examiner in Law of Torts)

In 2005 two academics were appointed to the new posts of assistant directors. Their interview answers to the question "What was your first impression of the programme and your position upon joining?" are revealing:

"It was fairly confusing at first. I was appointed at equivalent of a SL position but the job was actually very different from what you would imagine it to be. Certainly it was different from what a SL was in XX. There was teaching as I had known it and you were very remote from the students and there were no pastoral duties towards the students. So instead of working and teaching with students in the classroom, you went from that to working in an office. So are you a lecturer or an administrator? But you still have a commitment to education of the students and setting and marking the exams. I was supposed to develop materials for the criminal law course and to develop the VLE. And I just sort of got on with it in small bits. W [then Director] would provide some guidance but there was no actual or solid framework to work within. At that time things were under a lot of change as well as we were creating the new study guides and learning guides and all of that was new to the programme and there was no precedent to develop from." (Former Assistant Director of the ULP 1)

"The programme was kind of ...just there, but there was nobody there, if that makes any sense. There were these huge amounts of administrators.. [but] where, what was the laws programme? Mostly, it seemed that there was a vacuum about the structure of the programme." (Former Assistant Director of the ULP 2)

One remarked in informal conversation that on their first day both were given "desk places that were not desk places but spaces along a long table shared with office administrators" and the person sitting beside was busy "ordering office stationary". As a result she felt she could not do any work there but had to find other spaces where any work on thinking about study skills could take place.

A later academic appointed in 2008 as a skills tutor stated: *"[When I joined] I wasn't sure what I was in for. And when I first came on board I was still not sure what I was in for. It was definitely different from a University dealing with internal students. I had the sense of entering a very large administration structure. In XY [the University where he had formerly worked] the sense was more of entering an academic faculty and of course... they had the administrative side for the law faculty as well, but that was very minor in terms of impression for the academics. Of course, the administrators probably did very important work at XY and everyone working at universities complains about bureaucracy. But at London, the impression of administration is overwhelming or it seems that way..."*

Their experiences appear to reinforce the statement of the previous Director, who speaks of having to develop a programme completely out of just an examination system which meant “trying to populate a void”. It also points to a strong mediating factor that the culture that any academic staff appointed to the EULP would come from an “internal” background. For better or worse they came with a certain tradition of academic teaching, a set of experiences and did not come into a place with an academic infrastructure but a set of panels and committees and were physically located in a predominantly administrative location: Stewart House.

3.4 The Development of DL Resources

With regards to the second step of reform – the development of specific DL resources in the programme, it is appropriate to take up the narrative of BS who was appointed in 2001 to the ES as a “DL Advisor”.

“I was an educationalist working in the field of DL... The UOL had [now] chosen to define the ES as DL and then they were also reinvesting in creating new programmes ... people were saying that they would like to do a DL programme in this area and we are happy to take the funding and can you help us design the programme, but the University did not know how to do that. ... I came in because they [the ES] wanted to be able to offer expertise to people developing DL programmes....”

When asked about the qualms many had in adopting the classification of DL, BS replied *“It doesn’t have much meaning to me. There would be inevitably... an effort to create a taxonomy and a classification system, but they are ultimately unhelpful. My stance was quite clear from the outset. People were working in unfamiliar territory, but the University had chosen to use the language of DL and consequently were going to be judged by DL standards, so I probably took the stance where I said that my job was to help you understand and evolve and deal with the consequence of choosing that nomenclature. In most basic terms, you needed to start from first principle which is the distance between the teacher and the learner. Where the teaching may be created at a different time then when the learning happens. The teaching may be resourced in a different place where the learning happens. Another thing that I have always focused on is that the cultural distance that always exists between teachers and learners is massively extended when you are dealing with language barriers and cultural barriers. So it isn’t just time and space. It’s time, space, culture, history and access to resources. Now if you are running a DL programme of the UOL, well within a stone’s throw of where we are sitting now, [there is] one of the world’s leading academic libraries full of books, but some of our learners are in places where there is not a single book. So what I liked to have done was to get you thinking about the implications of distance.”*

The interviewee related how when he wandered around the various sections comprising the administrative side of the ES and then met with academics running programmes he was struck by the lack of an ‘educationalists perspective’. There was, he hinted, a lack of coherence or guiding theme in the issues people raised and the way they identified problems. *“they said often they were looking from the students’ perspective and saying these were the shortcomings of our programme but they were really just putting themselves in the place of the students [instead of having real student’s perspectives] and saying what they wanted to achieve”*. When he looked at

the programmes they were offering and what they were doing: *"it looked as if they didn't know what they were doing as educationalists. And the programmes lacked materials that communicated comprehensively, efficiently, clearly. There was an absence of support for the learners. There was a preoccupation with outcomes but little effort going into the inputs."*

However, he admitted that he had come from the Open University where there was a long term heritage and 'capacity', here capacity needed to be built. Not in terms of administrative process or in particular factors but *"in dealing with the consequences of having chosen that nomenclature [DL]. Certainly, the early discussions we had were always about what does this mean, what is the consequence of this. The problem I encountered... was on a succession basis. I mean, the laws programme is a hundred and so years old, so even if you knew about DL, you pick up the inheritance of an examination system."*

Both the then Director and the DL advisor relate that they spent a great deal of time discussing the meaning of distance education and models of development: *"[2001-2004] BS would spend hours and hours in my office with charts and flow diagrams. How to test programme development... feedback flows, team building, intelligent materials, planning, control features, evaluation procedures I would be thinking, God this guy has so much energy and commitment... but how do I use this to reform and develop... doesn't he realise that I [at that stage] am the only full time academic and I have to deal with guys who work in the UOL colleges and never think about 'distance' unless on the occasional trip to see external students or worrying about the scripts."* (Former Director ULP)

Having got a budget for redevelopment the Former Director relates his experience of trying to develop a DL culture: *"Well BS provided me with a number of consultants and I would meet them individually and discuss particular questions. I decided [2002] to set up a briefing/workshop for all those who expressed an interest in working on the ULP [a memo was sent to the colleges to be sent to all staff outlining 'opportunities' in writing new materials, contributing to developing a VLE, examining, occasional lectures]. I chose an experienced practitioner to give the workshop and we paid any law academic for participating. We met in a beautiful room in the Senate House library. I had warned him at lunch beforehand that the participants would be hardened law lecturers and would not indulge in any touchy feely stuff so concentrate on getting across basic principles of DL and the ideas of communicating in materials. However, he did not seem to have listened. For 3/4 an hour or so it went fine, people looked attentive, even took notes, I was thinking right they are going to sign up to change, but then he said: 'Ok I want to you now to divide into groups of four and do focus groups, take one of your subjects and break it down into the learning objectives and consider how to achieve those over distance and then report back'. God, the looks I got. There was going to be open rebellion and a couple just up and walked out. So I said 'time for a coffee/smokers break!' A number of them said to me: 'Ok we trust you, just tell us what you want us to do, but none of this, we walk if we have to do this...' So after 25 minutes I recalled everyone [who had not left] and said that it had been great looking at DL principles and I would be using these in a process of reform, but not to worry I would meet with everyone individually and see what role they could play and provide support for writing a new style subject guide."*

This exchange brings out an important constraining factor, the presenting person saw himself as a facilitator, he wanted in the language of Peters (2001) to bring out the “pedagogic self-reflection of distance-education practitioners”, but these were not DL practitioners, they were full time lecturers at one or other of the UOL law schools. The former Director relates another anecdote from his experience: *“So I did another, less formal session, connected to an ELC and demonstrated that I wanted to develop a chain of learning objectives, materials related to achieving them onto assessment that allowed students to perform. How could we, I proposed, break down the learning objectives for our core subjects in a more discrete and differentiated way? But, one reply came: ‘The learning objectives of the law of tort... are The Law of Tort!’ !!”*

So here we can see the intersection of identity and culture. How, then, in this intersection, did reform achieve its goals [if it did?] The answer is one of attempt. Of attempt(s) to incorporate or integrate distance learning pedagogics into what still remained [and perhaps still does remain] a process/arena/community of practice that has an examination system at its core. One attempt was to create a distinctive set of learning materials.

Consequently the former Director relates that he appointed a DL editor who would edit to a similar style all the laws subject guides. *“There was minimal opposition as I drew up new contracts for writing myself with payment based on what BS told me was current in the DL scene. Each guide was to have two authors, a main and the second a minor contributor but responsible for critically reading what the 1st author had written. All guides would also be sent for external scrutiny. All authors agreed to work with [the DL editor] and I would arbitrate disputes... there were a number of complaints but mostly there were defused. I myself soon realised how much we wrote for ourselves [i.e. other academics] and did not really take on board communication. I was in Bangladesh when [the DL editor] emailed me the 1st draft of the 1st four chapters of the new ELS guide, I was livid, he had changed my phrases, my language.. I spent hours trying to reach him by phone... thankfully I did not get through... a day or so later I thought what the hell, it’s almost the same and yes, I suppose it is more easily understood. But of course, my particular syntax had gone, and I’m quite partial to my particular syntax...”*

Discussion of the learning materials or, at least the subject guides, is contained in a subsequent chapter, the issue here is how development reflected or was constrained by, identity and culture. Clearly the heritage of the examination system is pervasive:

“One significant change in material was meant to have a huge symbolic difference. In 2006 one of the newly appointed deputy directors reviewed the subject guides and undertook to write a new guide with a particular outside consultant who had been doing observation in several [third party] institutions. We decided to replace a guide called Guide to Examinations [Technique] with a Guide to Study Skills termed ‘Learning with the University of London Law Programme’. Writing this took many months: the result was [in our eyes] our flagship [guide]. It was pedagogically sound and epitomised what we deemed ourselves to be about: learning in a newly resource rich environment [with the establishment of the new online library etc]. The learning process, the activities in the guides... was at our core, not the examinations... [But] I wonder if anyone ever read it! Why would they? Assessment leads learning, not learning assessment, and they do not control assessment...” (Former Director ULP)

The move was a failure. It had, in the terms earlier in the chapter, misunderstood, or tried to impose an answer to the question: What was the important information? Operationally, whatever the ideal, it was not study skills, it was examination technique. Moreover, when the former Director related that a particular complaint was received from a student concerning clarity of examination processes the Chair's response was that the complainant should be referred to page X of the Guide to Examinations and when told it was no longer sent out, "He was perplexed... but that is the central guide [he said]..."

Issues over identity are not just at the level of whether academics feel they are integral to an academic programme or, as put at the extreme: *"an appendage to an administrative body who buys in my services"* (quote taken from informal discussion of Joint Chair of Examiners, CE Contract Law), but run through all everyday activities. Take the provision of materials and the advent of the VLE, this gave rise to a tension between accessibility and effectiveness or quality, as one of the [then] deputy directors stated: *"XX [the then Director] kept emphasising that the VLE would be the method of communication in the future and I thought he had got agreement that we were moving away from the printed subject guide and study packs to putting everything online, but then the argument would come up that someone in the African forest would not be able to access... so the printed guides [that took a year to revise] must remain. Ah!"*

An AD relates that the official description was learning in a resource rich environment and increasingly 'blended learning', but what did these mean in terms of the programmes identity?

"I think what he meant by blended learning was trying to find some balance between the provision of self-help materials (which the subject guide were intended to be) and the fact that so many of the students were in the [third party] institutions." (Former Assistant Director of the ULP 1)

Another feature of tension lies in an intellectual demand that the definition of DL (according to Peters, 2001: 15) requires: "learning and teaching is distance education-oriented if it takes account of the special conditions of the world in which distant students live and of the special conditions appertaining to distance teaching", however, as the former director states: *"it was crucial in many markets to stress to the legal profession boards that we did not make any distinction, any allowance for, between internal and external students.[A question put to me by the AG of XX was that they thought we had created a special paper for those sitting in Asia that was "easier than that sat in London by internal students; I had to explain in detail the whole system]. When I stood before groups of prospective students in Hong Kong and Malaysia I would say that the quality control of the program is that we do not tailor the programme to your conditions! Of course I would give advice on how to succeed, but I would emphasise that we make no consideration for the diverse conditions in which you study in which you present yourself for exams. You are being dealt with wholly similar to our internal students. Of course I would mention the role of third party institutions and what they could offer..."*

Another feature was that once development was under way there was a tension between those who seemed to think that the goal was to offer a version of what the internal students were being given and those who thought the programme had to take on a life of its own and create particular and specific approaches and use technologies

to span distance. These are issues both philosophical and practical - to paraphrase a common reflection issue: "given the diversity of students should we be trying to offer them some package that took into account their situation and their life experiences?" No, appears to be the response. "You cannot take their circumstances into account; that way lays compromise and dilution of standards", is another paraphrase that could have fitted everybody. Yet at the same time there was and is constant thinking about how to improve materials, how to encourage students.

3.5 Politics

One word that repeated throughout the research time, both explicitly and implicitly was "politics". Staff of the consortium office, the DL advisor, the former director of CPQ all made some reference to 'the politics of development' the 'necessity to develop relationships in somewhat trying circumstances', or the need to negotiate in the face of diverse interests. The former director of CPQ referred to the attempts to "transform EISA from an administrative entity to a professional learning organisation" which was meant to create flexibility but resulted in "confusion" and that one should simply understand EISA/International Academy for what it is a bureaucracy. A CE and joint chair of the Board of Examiners stated: "We fight, politically, but it's not some Machiavellian game, it's to protect the programme, right?" The conversation and interviews with the former deputy directors had numerous references to a politics that seemed to lurk everywhere but was not their area to engage with but that the then Director of the ULP "looked after the politics". The current Director referred to not realising "how political the place was" and, while not precisely stating it, implied that her position was rife with politics. An indication of the political situation of the current director (took up post in 2010) was made by experienced examiner and long-time member of the ELC: *"under the terms of her employment, unlike under [former director], JX [Dean of the External System] is her line manager, whereas [Former Director] could assert his independence and think of himself as in the Law Schools, she is unclear... whether or not she's supposed to be the one who's meant to be... well I'm putting words in her mouth now, representing the Law Schools or the International Academy.. so I think she is finding her way over the extent to which she should draw on the Heads of Departments as in the sense of members of the ... I was going to say coalition, but it's not that, the consortium... members of the consortium to fight in her corner when there's some laws thing coming up, right." But "it's a difficult thing to know where the Heads are supposed to bring their influence and on precisely on what issues they want to bring their influence to bear."*

A major reason for the Heads of law Schools being more closely involved was the issue of the contract. After the failure to achieve a new financial deal (as recounted earlier in this chapter) when a new Vice Chancellor arrived the Chair of the ELC and the former director negotiated a new financial split with the Vice Chancellor (giving each College in the Consortium c. £280,000) which continued on a rolling one year basis pending a new formal contract. However, at the time of submission (October 2013) no new formal contract had been signed. A major sticking point was the actual division of responsibilities with the International Academy seeming to say that as there is no single lead college they take on a greater role and thus take a greater share of the finances. If the colleges were to get a bigger share then they had to show a commitment to greater involvement and oversight.

Another reason was the realisation that the programme was now a DL programme. Again the same interviewee related that *“at a meeting in 2001 a Deputy Head of one of the Law Schools seemed to be completely oblivious to the fact the programme had actually changed from an examination, you know, degree by examination into a distance learning programme, and then objecting to how it had happened sort of behind the college’s backs. Well anybody who had any... had he paid attention, and maybe they hadn’t paid attention very much, would have known that this was the requirement otherwise there would have been no degree at all...”* The point being made here was that now there was a large amount of learning material in the public domain which indicated that it was produced under the academic direction of the six Law Schools, but should the heads of law Schools review this material?

Another, almost converse, result was related by the former Director: *“I was meeting with Y [Head of one of the Law Schools] and showed him some of the material and was explaining some of my aims when he interrupted saying ‘hold on, hold on... you are making it too good!’”* The point here was that with home fees increasing to £9,000 a year, if the ULP was producing top class learning materials for a fraction of those fees, this could be a threat to the notion that coming internally was worth so much more!”

A similar problem confronted a relatively recent move to change in the core subjects the position of Chief Examiners and subject convenors (who provided oversight of particular subjects) by introducing an enhanced subject convenor role who would be both CE and responsible for all the learning materials in that subject. This was first suggested by X who explained his thinking as such: “What I wanted was simple; if Y was subject convenor for Contract law and did Contract law at QM then the contract law module would be simply replicated. Just go to what was on the QM VLE and repeat it for the [external] students. If I did Jurisprudence at UCL: then Jurisprudence on the external would be the UCL course. That way there could be no question about comparability of standard; they would be the same [although each subject may come from a different Law School].” But this did not happen: instead the new subject convenors are commissioned to write material for the programme that is programme specific and the copyright goes to the International Academy.

Chapter Four

Independent Third Party Institutions

4.1 An overview of the operations

Given the analysis of identity and culture in the preceding chapter the thesis now considers the role of independent third party institutions. These institutions are especially prevalent in countries with large numbers of students registered externally with the UOL, such as Hong Kong (where they are extensions of State Universities), Malaysia, Pakistan, Bangladesh and Trinidad and Tobago. These institutions provide local teaching, study facilities and study materials for a fee, separate to those fees the students pay to UOL for registration and examination. The type of teaching support varies from short revision courses, to weekly or biweekly lectures for students studying part time to continuous lectures and tutorial classes similar to a university's internal provision for students who are of traditional university age, for example, in Malaysia, Bangladesh and Sri Lanka, where the provision of UOL degrees by external study provides an alternative to local university education or going aboard.

Approximate estimates are that 75% -80% of students (per ULP Self Evaluation Document, [SED] for Institutional Audit, 2006) reading for ULP obtain some support from an independent third party institution, either attending physically on a full or part time basis or by correspondence. Some institutions provide support only for the ULP, while some provide support for a variety of degrees offered by UOL. A few institutions also provide support for DL programmes offered by other universities, however, it has been observed from the institutions studied in the research that, of the institutions that do offer support for other degrees and programmes, the bulk of the institutions' customer base are comprised of students reading for the UOL external ULP. As such, this gives rise to the symbiotic link and relationship between these private commercial organisations and the UOL.

In order to maintain the commercial viability of their enterprise, it is clearly in the interest of such independent third party institutions that the marketability of UOL degrees flourishes. The international recognition of the UOL as an educational academy and the traditional standard upon which degrees are awarded, making no distinction between modes of study, makes the degree by external study (now International programme) sought after, especially in countries from the Commonwealth and countries where local university education is limited or there are ethnic quotas. The ULP in particular proves very popular in countries where it is accepted as a degree for entrance to practice in the legal profession. Thus, as long as prospective students view an undergraduate law degree as a valuable qualification and are confident of the strength and reputation of the UOL as an awarding body, independent third party institutions will enjoy a strong, core customer base.

The UOL, on the other hand, up to 2008 (apart from the particular circumstances of the Goldsmith's Lead College computing programmes) offered no formal recognition or relationship with such institutions and have no control over the local teaching provided. It has been recognised by the former Director ULP that the role of third party

institutions are “not factored into the official literature describing the operation of the external system.

“One of things I noticed in 1999 when I looked at the prospectus was the message from the Director and it stated that studying as an external student was a lonely endeavour and the image presented was of an independent student with a reading list. However, of course, many students were not actually independent and were at institutions. It seemed to me then that this hole existed about the role of the institutions and it was almost like a taboo subject, like the institutions existed but the university was afraid to say or recognise that they existed?”

When interviewed and asked on this point the first director replied:

“The examiners felt that they were doing something for the external students and we used to, as a joke, refer to the guy sitting on his own with his books, I think I had a mental image of him sitting alone in a tent with a hurricane lamp in the jungles of Ipoh...that was our stereotypical image – meant as a form of running joke. We were trying to help the individual students... but realistically I knew of the role of the institutions but we could not admit it. I think they [the University] were very nervous, very nervous about giving any kind of guarantee to the students about the quality of the institutions they were attending...”

Q: What kind of relationship was there?

A: We couldn't be seen as recognising them or giving them the university backing. How far could we go in cooperating with them without becoming somewhat beholden to them? For instance, the simple example of the revision course, some of them were not above claiming them as some form of recognition by the university.”

Indeed, even the SED (2006) only gives a cursory and ambiguous statement of the role played by independent third party institutions, stating: “In the case of the Diploma, the University has a formal relationship; in all other cases contact between the University and the institutions as far as teaching goes is purely informal... Such institutions vary enormously in character: from state/public universities to small private set-ups. Students who attend an institution enter into two contracts: one with the UOL and another with institution; these relationships are separate and the University deals with the student wholly on the basis that the student is registered with the University as an external student. The University/ULP retains full control of all matters concerning the award of qualifications and summative assessment. The University does not enter into franchise arrangements”. The SED (2006) does acknowledge that “such institutions are vital for the programme as they effectively market themselves and bring students in their countries; a good institution mediates the London programme with the cultural norms of the locality and may provide personal support as well as the opportunity for students to develop peer group networks. As a general rule of thumb the stronger the private institutions in a country the stronger the market”, and goes on to highlight the fact that the importance of the institutions are recognised by the creation of a dedicated sub- committee with the ELC and the Institutions Office within EISA, however, the SED makes no mention of the extent, type and frequency of liaison the sub-committee or the institutions office undertakes with the third party institutions, except to state that Office “monitors institutions and seeks to ensure that institutions do not give misleading messages to students or make false claims as to their relationship with the University”.

Both current and former Director ULP constantly asserted a “strong correlation between effective private tutoring institutions and healthy markets” and stated that “external system staff are committed to greater liaison and co-ordination with third party institutions”, but as highlighted in Chapter One, the experience and methods of such institutions are not recognised nor studied in the literature of English legal education and distance education.

4.2 Development and Evolution

Peters (1998:93) as earlier quoted identified the UOL degree by external study as an extreme model of non-directive autonomous education, however, with the majority of ULP students receiving tuition support in third party institutions, these students cannot be defined as entirely autonomous learners, but as heteronomous learners who, of their own initiative, make use of tutorial support or who take decisions in the scope of a simulated situation. They are “not actually acting autonomously, even if this may on occasion appear to be the case. In fact, they are being controlled from the outside, directly, indirectly and sometimes very subtly” (Peters, 1998:95).

It can be argued that if attempts to find other resources are a crucial part of autonomy in learning, then by seeking out and registering with an independent third party institution, students reading for the ULP are in fact demonstrating a degree of autonomy and control over their learning process. However, Peters’ (1998) definition posits that expository teaching and receptive learning are incompatible with the concept of pure autonomous learning and indeed, he acknowledges that the circumstances of distance education are such that it will not readily “adopt autonomous learning as the basic form of academic studies” (1998:95) and that some form of heteronomy may always remain present.

Independent third party institutions are not a recent phenomenon. The Charter of UOL in 1836 allowed for candidates to sit for examinations upon presentation of a certificate showing attendance and good conduct at an appropriate institution of learning and that such certificates need not necessarily be issued by University College London or King’s College London, but also “from such other institution corporate or unincorporated, as now is, or hereafter shall be established for the purposes of education, whether in the Metropolis or elsewhere in the United Kingdom”. The first university given approval to issue certificates for the UOL examinations was University of Durham, and by 1840, 36 medical schools throughout the United Kingdom were granted this approval, increasing to 68 in 1853, with additional 32 institutions approved to issue certificates for examinations in the arts and laws. A supplemental Charter in c. 1850 allowed the UOL the power to grant approval to issue certificates for examinations to institutions “in any or Our Colonies or Possessions abroad, or in our territories under the Government of the East India Company”, and gradually institutions in Malta, Bengal and Canada were granted such approval (Jones and Letters, 2008:11).

While institutions who were given approval to issue certificates allowing students candidacy to UOL examinations cannot properly be likened to the independent third party institutions of present day, in the sense that their relationship with the central university was a lot more formal and controlled, it demonstrates that from the outset the

UOL had envisioned that students could undertake studies at an institutions that was not under the direct academic and administrative control of the central university.

Clause 36 of the Charter of 1858 abolished the need for students to produce a certificate of attendance and conduct from an institution as pre requisite for candidacy to examinations, and as such allowed students who studied independently (perhaps the pure autonomous learners envisioned in Peters' model) eligibility for candidacy as well. However, Clause 36 did not put an immediate end to the system of institutions affiliated with the UOL which provided students with teaching and preparation for the UOL examinations since the medical degree required attendance at an affiliated medical institution, with over 100 colleges affiliated for this purpose by 1900. At different periods specific subjects such as economics, pharmacy, sociology and engineering, required attendance and this continued to "involve the University in inspections of the teaching, library and laboratory facilities of institutions that were offering its degrees in these subjects". The system of general affiliation soon gave way to a system of granting approval to provincial centres to allow them to conduct UOL examinations on their premises instead of requiring candidates to sit for them in London. Thus gradually, with the exception of medical and dental degrees, students could study and sit for the UOL examinations without physical presence in an affiliated institution or travel to London (Jones and Letters, 2008:52)

The demand for students in the United Kingdom and other colonial territories to read and sit for UOL examinations meant that it offered a fertile growth opportunity for colleges to establish themselves and further their expansion by offering courses to prepare students for the examinations. Different forms of establishment grew up: "many were incorporated as non-profit making associations under civil corporation legislation which enabled them to own property. What they could not do was award degrees, since for this a royal charter was necessary. Instead, they could offer to prepare students for University of London degrees, and the chance to do this was particularly attractive to institutions with their own ambitions to achieve university status" (Jones and Letters, 2008:58). It was with these motivations that, in the last 2 decades of the 1800s, several higher education colleges were established throughout regions in England and Wales committed to teaching at a degree level for UOL degrees by external study, with many such centres later becoming part of a fully fledged university.

On its part, the UOL supported this educational growth by lending their experience in the form of special relations with several institutions. For example, from 1949, Southampton, Hull, Exeter, and Leicester all gained their charters as universities after "a short but intensive period of special relations with the UOL, during which they were given increasing control over student registration, course syllabuses, teaching methods, and exam practices and marking. By the end of this period, each of these universities had a base of several hundred students on which to build" (Jones and Letters, 2008:66).

This scheme of special relations were also extended to institutions in several of the colonies motivated by the recommendations of several government committees considering the expansion of higher education in those regions which put forward some key principles: namely, "...the requirement that each university should have degrees in subjects suitable for its catchment area but equal in standard to those of British universities; the desirability of colonial universities serving an apprenticeship under the guidance of a British university before being permitted to award their own degrees, and

the need to establish research as well as teaching in the colonial universities” (Jones and Letters: 2008:115). The UOL was the obvious choice in meeting these aims due to its establishment in the colonial territories since the 1860s as an examining body and its familiarity with local examination centres. It has also had experience in helping other English universities gain independent status. Through this scheme, the UOL assisted institutions “in the countries that are now Ghana, Jamaica, Kenya, Nigeria, Sudan, Tanzania, Uganda, Zambia and Zimbabwe, to prepare for university status by sharing responsibility for academic standards with them over a period of years until they felt they were ready to award their own degrees” (Jones and Letters, 2008:115).

One distinct feature in all these relationships which the UOL has established and enjoyed with institutions outside of the central university is the direction and approval the university retains over the local teaching, syllabus, facilities and administration. With regards to the institutions in the colonial territories, the University “modified the External system for these colleges in four significant ways. Special entrance requirements could be prescribed for their students; special syllabuses could be drawn up to suit their individual needs; special examination papers were set for each college, and the papers were set and the scripts were marked by special boards of examiners which were composed partly of teachers from the college concerned and partly of teachers of the UOL” (Jones and Letters, 2008:115). This element of sharing UOL knowledge and experience is also evident in the scheme of recognised teachers. The University of London Act 1898 transformed the UOL into a university not only responsible for conducting examinations and awarding degrees, but also for teaching with its own schools. This change gave rise to the distinction between Internal and External students, with Internal students being those who studied in a school of the University and External students being those who sat for the examinations but had not pursued a course of study in a school of the University. However, the Act allows that students could be categorised as Internal if they were not at one of the schools of the University but were studying “under one or more of the recognised teachers of the University in an institution within 30 miles of the University’s headquarters”. It was only in 1971 that the position of having UOL recognised teachers at institutions independent of the UOL was deemed anomalous and the scheme was gradually phased out, with the result being Internal students were solely those who had pursued a course of study at one of the schools of the University.

In the 1990s a system of recognition was attempted but rapidly discontinued, in the words of one interviewee: *“owing to the VCs fear that any link with third party institutions would dilute the brand”* (this was agreed on by several other interviewees). Until the recent adoption of a limited recognition system institutions had no need or opportunity to formally affiliate themselves with the UOL (the term affiliate centre in fact today does in no way mean the level of engagement that affiliation denotes) and teachers within such institutions who are supporting students reading for the UOL degrees and conducting their teaching according to the prescribed UOL syllabuses have no formal training or recognition conferred by the central university. (It should be noted that a trial scheme of training for the laws programme was undertaken by the former Director using the services of an outside educational consultant and involved short one day courses in selected places – London, Kuala Lumpur, Singapore, Dhaka – and tutors preparing a portfolio of their teaching but while the sessions were well attended only one tutor completed a portfolio and the trial was not continued after the

ELC did not accept that successful tutors could be given a certificate of recognition by the laws programme.)

Interviews with principals and founders of the institutions visited as part of the research highlighted the fact that almost all of the institutions were founded based on the observation of the demand, in the country, of students wishing to obtain a UOL degree, specifically an LL.B.

“The thing is that, culturally Jamaicans considered the intellectual peak culminates in being either a lawyer or a doctor. Not even politics is so considered and even within politics, people consider it an asset that they do law and eventually move on into politics. So, I set up knowing that.... And even from the UK, when I advertised in advance, at that time about the Holborn/Wolverhampton programme, I saw the response and the need for it. And when I came back to Jamaica and started advertising, I saw the response as well. So I didn’t do a formal market survey, I just put out ads sporadically... we found from the calls that we got tremendous interest here... So when I came to Jamaica, there were three things I was considering: The ILEX programme, the New York Bar and also looking at offering a law degree programme through Holborn College. But having come to Jamaica and seeing the interest in law, the UOL seemed the most attractive and I started with it, sort of just offering it as a niche tutoring actually (for students who has privately registered with the UOL and were attempting study on their own), and it just mushroomed from there. I started with 6 students and we now have around 166 on this programme alone. We started in September 2005 and we advertised the summer in the few months before”.

“Prior to coming to Jamaica, I did not have any experience with the UOL programme. I had done some tutoring when I was doing my Bar in England to supplement my income, privately. A group of us used to do that. When I was coming to Jamaica and looking at the Wolverhampton, as you know Wolverhampton was a former polytechnic. Now, this does not matter outside of England as mostly people outside of England, here certainly, look at England as a paragon of education. But what I find personally, when I started looking at the interest, a lot of Jamaicans know about the UOL programme, and it was the request from the clients that made me start looking into the UOL programme. (Principal/Lecturer of third party institution – Jamaica)

“I went for the Bar in London and when I got back there was a dearth of teachers at that time for this programme, but it was getting quite popular in Bangladesh. Law, as you know is a big thing here and many people want to do it. And I was approached by XXX Academy [the first independent third party institution in Bangladesh to offer teaching for the ULP] because the head of the institution at that time was taken seriously ill and the institution was taken over by his wife and she needed some assistance and I was happy to take it up. As with the expansion of the school and then you get more students, more demand, and more teachers being hired. After 2 or 3 years, there were a lot of different decisions being taken and some of which I could agree with and some of which I couldn’t, so I made the decision to move on and focus more on my practice. It was XY [then Director of ULP], when he came to visit the academy and asked about me because we had known each other from my time there. I contacted him and we had a visit and a talk and he encouraged me to stay in teaching, since the programme is popular and growing here...and this ...encouraged or supported my decision to start my own institution. To offer law and also some of the other UOL

external degrees like the BSc. Economics... (But) most people come asking about doing law". (Principal/Lecturer of third party institution – Bangladesh)

"As you know, when we came to start up in Singapore, it was a period of dwindling or decreasing popularity for the London LL.B because of the ruling about 1997. So at that time, a lot of people may, were in fact, put off about doing the programme because they thought if ultimately I cannot practise in my country, what's the point? But [my CEO] was quite adamant that there would always be a core group of people who are interested in doing law for reasons other than practise and there may be students interested in doing [the programme] to use law to further their career or current qualifications. Of course, the numbers in Singapore registered on this programme are nowhere near the numbers back in the 1980s, but we do get still a good number of students every year signing up and in fact, our numbers have increased throughout the years we have been established, so clearly lack of local recognition to go into the profession has not killed off interest in law in general or the confidence of people in the value of UOL degrees". (Principal/Lecturer of third party institution – Singapore)

"I have been teaching on this programme for 19 years now and managing a college specialising in this programme for 15 years or so. When I first decided to branch out and start my own place, there were a few people who asked me to reconsider and even I gave some second thoughts...in the sense that...you know, some of them were saying that don't you think that the Malaysian market for this programme is saturated and maybe the market may not be able to support another institution and all that. But I was confident of my expertise in this programme and also I think in Malaysia, the UOL and especially the LL.B will never die out. Doing law is a very common ambition and becoming a lawyer is very prestigious in the eyes of many families, so they will want their children to do law. UOL has a traditional strong reputation, undisputed really, in fact, many of our top lawyers and judges are former UOL graduates themselves, and the profession here recognises the UOL qualification and standard. I don't really want to comment on the standard of the LL.B of our local universities compared to UOL, but one (practical) difficulty with the local universities is the strict quotas on admission based on (ethnic) preference, so many able students will need an equal alternative to do their degree". (Principal/Lecturer of third party institution [no longer in operation] – Malaysia)

In depth interviews with founders of independent third party institutions in Trinidad and Tobago were not possible as the founders were either unavailable or unwilling to sit for formal interviews (despite numerous attempts). They were, however, more than accommodating in allowing the researcher to observe their institutions and interview staff and students. Moreover, they were happy to engage in informal conversations and were very forthcoming in their opinions (as long as they were not 'formally' recorded!) All referred to the popularity of the degree in the country and the reasons cited were cultural respect and preference for the legal profession and the traditional standing and reputation enjoyed by the UOL. Support for education from the government of Trinidad and Tobago also helped to increase the student base in recent years by running a scheme where the State will pay for the costs of higher education for certain degree

programmes, of which the UOL ULP was one in the name of offering an educational opportunity to those who otherwise would not attempt university level qualifications.²

Certainly the existence of a strong current and potential student base in these countries provide a commercial motivation in the founding and operation of an independent third party institution. Prior to the development and growth of third party institutions in the countries studied, most of which have been established long enough to enjoy their own branding and reputation in terms of preparing students reading for the UOL ULP, students would rely on resources from other sources, such as correspondence colleges run in the United Kingdom. The most popular of such correspondence tutoring services was Holborn College, which produced their own study material, lecture recording and marked assignments and provided feedback for a fee. The sums spent by local students on the resources provided by Holborn College amounted to quite a lot after conversion from local currency to GBP. The researcher recalls her father, himself a former student of the UOL ULP in the 1980s, using Holborn materials and resources, and while precise figures escape recollection, it was certainly a good sum of money for that time. Anecdotal evidence from former graduates of the programme prior to the establishment of third party institutions revealed that some had paid local lawyers to conduct private or small group informal tutoring. This is confirmed by the experience of the principal of a third party institution in Jamaica whose idea of starting her institution stemmed from her friend asking her for private tuition. It is certainly against this background of the need and willingness of potential customers and lack of good product that must have motivated most founders to fill a gap in the market.

Of the institutions studied in the target countries, teaching staff consisted of full time academics and practising lawyers who taught on a part time basis. In Malaysia and Singapore, the largest institutions employed a faculty of full time academics, some of the more senior faculty members also heavily involved in the management of the institution. The institutions in Bangladesh, Jamaica and Trinidad and Tobago draw their teaching staff from the ranks of local practising lawyers or legal consultants. A common thread through all the institutions appear to be that the teaching staff, whether full time academics, or practitioners teaching part time, overwhelmingly possess an undergraduate law degree awarded by the UOL, and obtained through the mode of external study. With regards to the few teaching staff not UOL graduates, they possessed of a law degree awarded by an English university. Throughout the field study, the researcher did not come across a single member of teaching staff in any of the institutions who participated in research who were graduates of the law degree programmes offered by the country's local university (although several had Masters degrees from local Universities). The reasons for this varied. One reason cited in interviews was that an advantage of having teaching staff who were themselves graduates of the UOL ULP was that they would be sensitive to the syllabus and standards of the UOL and would be able to guide students appropriately.

² The former Director of the programme relates the unintended consequences of this move: '[X institution] used to have the best pass rates but especially in the Diploma expanded greatly and the pass rates plummeted. I accosted X, owner and director of the college and said he was taking in people who had no chance of success and was not applying the entrance test [for the diploma entrance] rigorously enough. His reply was that the legislation for the scheme stated it was to give an opportunity for those who usually could not gain admission, now if I reject without an absolutely firm grounds I will be open to being sued by the rejected applicant and liable to be seen as biased, so I have to take everyone! I thought, what! He is taking the micky but when I read the legislation and the accompanying notes I thought he may have a point.."

"I have set criteria on who can teach. Firstly, they must have an English law degree, not necessarily from London but it must be an English law degree. That is an absolute requirement and I don't veer off from that. Because if I get someone with a West Indies law degree, their focus may be a bit limited. The West Indies is still very much based on common law generally in structure and essence but if you look at so many subjects these days like Employment law and Criminal law, the UK is dealing with a lot of specific local and European statutes and it is very different. So if you get someone locally they have a huge amount to do to get up to speed". (Principal/Lecturer - third party institution, Jamaica)

"... I prefer London graduates, as I think they know what the programme requires". (Principal/Lecturer - third party institution, Bangladesh)

This criterion in hiring teaching personnel explains a pattern noticed in the full time teaching staff of the institutions. It was observed in the largest institution in Malaysia, an institution in Singapore, several institutions in Bangladesh and Trinidad and Tobago, that the teachers were themselves formerly receiving tuition support from the institution they were now working in. In Bangladesh and Trinidad and Tobago, the returning former student as teacher had reached the third generation, where new institutions have been founded by breakaway groups of teaching staff of an institution who had decided to set up their own enterprise, despite having successfully and presumably satisfactorily completed their studies at the original institution at which they were first employed.

This opens up an important research finding: although there was no system of formal alignment (no formal affiliation) there are strong mediating elements that result in an informal alignment. This raises the question of whether in the absence of formal, organisational identity, whether the concept of CoP fits?

This in turn raises sub-questions: firstly, does an individual institution constitute a CoP that provides the space for members in the community to participate passively while they are students and later actively when they take on the position of teaching staff? Secondly, do the similarities in hiring patterns across institutions in a country or several countries give rise to a larger CoP amongst independent third party institutions? Lastly, if a CoP within teachers in the institutions can be identified, how do any shared practices affect or influence their teaching or student learning? The last question will be explored in depth in the Chapters on teaching and learning.

Wenger et al (2002) specify a crucial element in identifying a CoP as the existence of a domain. This is seen to exist as far as the independent third party institutions are concerned, whether individually or collectively. The data discussed above shows a clear common ground in the founding of the institutions in operation today. There was an identified need in the provision of teaching services for the ULP, there was a belief in the value of the study of law in general and of the degree in particular, there was a defined role for the part the institutions were to play viz the students obtaining their degrees and there was a belief in the value of the contributions made as a result of their existence.

4.3 Motivations and Self Perception

It would not be fair, however, to suggest that commercial benefits provide the sole motivation to the operation of these institutions. Most of the heads of these institutions accept that it would be very difficult to use their experience in the teaching to the UOL ULP to springboard their institution to a fully-fledged [State] university akin to the days of the special relations. All of the countries studied in the research are well past the days of empire and have established their own universities and the creation of any new local university in the country with the power to award degrees is the sole province of the respective decision makers of the State. Despite this, the data shows that there are still very strong academic and educational motivations behind the founding and operation of the independent third party institutions, and the heads as well as staff do not take the view that their enterprise is solely, or, at times, even largely, commercially motivated.

"I first started teaching when I was doing my O levels, simply because I just wanted to do something to keep active and my parents encouraged that. I started teaching very small children and I was trained for 6 months on that basis, including teaching children with special needs. So the teaching motivation, to help as such you can say, was always within me. When I started teaching external [UOL] students, my motivation was to achieve what the University wants to achieve. To provide quality education to students who do not get it, to make life easier for them, to facilitate where I can".
(Principal/Lecturer - third party institution, Bangladesh)

"I don't want them (the students) to just think about it as getting a law degree and it's going to be my passport to become a lawyer. They must aim high, minimum passes to get a degree is not enough, I want them to take it personally and achieve high! There should be that (intellectual) stimulation and excitement when they do the degree."
(Principal/Lecturer- third party institution, Jamaica)

"I expect them (the students) to be able to learn independently. I mean, I did my law degree on my own and I think I did quite well. I would expect students to do well if they have done some of the work on their own. So that's what I have been encouraging ever since I joined [XXX]. Of course, [XXX] was set up previously by the former owner to be modelled after Holborn Correspondence method (which a lot of the early Malaysian students used when there were no colleges here doing teaching for this programme), which is very much an institution which spoon-feeds the students. It breaks down all the material, writes summary notes, model answers and all that. But my system and thinking is different because I came from a different background, not Holborn. Basically, my system is where I had to do everything myself. So I think what I have done since I joined [XXX] is to inculcate a bit of that, you know, independent thinking and independent learning, but it takes a long time". (CEO/Lecturer- third party institution, Malaysia)

Observations through interactions with the founders of the 3 largest independent third party institutions in Trinidad and Tobago also evidenced an impression of strong commitment (respondents actually using the term "passion") for the law and education. The founder of one institution obtained his LL.B through independent study as a UOL external student, and went on to obtain his LL.M through the same mode of study also with UOL and was pursuing his PhD in an American university. He spoke many times of his desire to help create lawyers, and not just "people who study to pass a degree".

The founder of another institution is herself a practising lawyer, former politician and a judge and through informal conversation has spoken of her aim to groom students who are of high calibre. The founder of the third institution displayed a very strong interest in education and pastoral care of students. She has stated many times that running an institution is not solely about teaching the students but also about supporting them psychologically in their journey through the degree. The researcher has observed numerous occasions where she has engaged in personal counselling and tutorial support for students who require a different approach to the rest of the class. She has stated to the researcher that education is about helping the students to reach their best potential and that requires knowing students individually and adjusting the teaching methods and materials to best help them learn.

The commitment towards student welfare and education is also evident from interviews with the teaching staff employed at these institutions. Many of the teaching staff interviewed stated that the idea of start teaching at an institution stemmed from their own difficulties faced from their days as an external student and the desire to help others who are now in a similar situation. Some stated that they were impressed and inspired by the dedication and competence of their own teachers when they were students at the institutions reading for the ULP and wanted to follow in their footsteps.

"I am a lecturer and I have been here for almost 4 years. I started here immediately after graduation. I was a previous student and I had done the London external LLB as well. I had no thoughts of joining the legal profession for practice, to tell you honestly, I wasn't really sure about my next step, but [the principal of the institution] suggested for me to teach here. I took up the position as I was really inspired by the passion and dedication shown by the teachers during my time at [XX], especially [the principal of the institution]. I suppose my family background also helped my decision, my aunts and my mother are also teachers and that seemed natural to me". (Lecturer- third party institution, Trinidad and Tobago)

"I really enjoyed law and it was something I wanted to explore. I think getting into teaching was, for me, a bit of a surprise initially. I only wanted some legal knowledge and since I had some time decided to do the UOL programme out of general interest, but that led to an academic appreciation which coincided with an offer to teach from the institution when I graduated. It was certainly unexpected as my background and first degree was in nursing and law is a bit of a departure, but once I got into the law degree and really appreciating the issues and arguments and you know, just like the sort of joy and satisfaction you get when you understand an argument or principle, and it seemed natural to want to share that with others". (Lecturer- third party institution, Singapore)

"I am a lawyer and sometimes it's not very easy for me to juggle my commitments to the students and to my clients, but I do my best. Of course, to be honest, my main income is from my practice, but when I was approached to do this teaching, I thought it would be a good chance to develop another aspect to my work. When I did my post graduate legal qualifications in England, many of the instructors were practising solicitors and barristers, so it seems natural to combine the two. And of course, many students here are doing this with the intention of practising in future, so in a sense I look at it as helping to develop the profession. Some of my students may in future be my colleagues and that encourages me". (Lecturer- third party institution, Jamaica)

"I'm a bit different from the other teachers because I actually gave up full time practice to teach... some of my friends thought it was strange. It was a slight pay cut when I first started teaching, but I think it was worthwhile. My stomach was not cut out for practice, I was getting very disillusioned and my primary work was litigation and divorce and things in these areas get very nasty... it takes a person who enjoys a battle I think. And dealing with the dysfunction of some of the clients would drive you mad. Teaching has its challenges but it's definitely a more gentle profession. I think all lawyers do enjoy a good argument, but I prefer mine in the more abstract sense, and these days I enjoy my arguments with the students. Arguments about concepts, principles and jurisprudence". (Lecturer- third party institution, Singapore)

Some interviewees were candid in stating that they took up the post of teaching in the institutions because they were unsure of their career path after finishing the degree and saw it as a temporary stopgap while they decided on forging a permanent career. But even then, they clearly stated that they came to enjoy and appreciate the elements of rewards from teaching and satisfaction in enhancing student learning and welfare.

"Actually, it [being a law teacher in an institution] was meant to be short term, [but] I enjoyed it, so I stayed on and decided to continue. I have no real idea what I enjoy about teaching, or I mean I do but it's hard for me to really tell you precisely what it is. I enjoy reading up and learning more about the law that I ever did as a student, and I like imparting that as well. I start getting excited about a new case or legal development and you want the students to share that. When I first started, I was just going to be doing this for two years, so initially my plan was to be a tutor, which was what I started off as. Then I was given more responsibility, when I started taking on the lectures and then ...you sort of realise the students are depending on you...and you want to give them your best." (Principal/Lecturer- third party institution, Singapore)

These sentiments certainly strike a chord with my own experience. Having finished my undergraduate degree in law as an external student of UOL, I was approached by the head of the institution I had received tuition from enquiring if I was interested in joining the teaching staff. I decided to take up the position in the meantime while considering future career options. I started enjoying the activity of legal research and lesson preparation and having received positive student feedback greatly encouraged my sense of commitment to the students in helping them in their learning experience. It was a position I was to remain in with great job satisfaction for seven years and one which certainly shaped my belief that teaching is an equivalent aspect of the academic career to research.

There were some contradicting views which were less romantic.

"Sometimes I feel a bit ridiculous saying lecturer when asked about my job. I always have this perception that lecturers are people on a podium, old.... But more importantly, that they would be working in a university, employed by the university. So this is kind of a strange situation, like I am teaching for a degree but not a staff of the university which gives out the degree. So you sometimes feel that the respect is missing...is that the right word to use? (Lecturer- third party institution, Singapore)

"It just seemed like something to do after graduation. Like probably most of us here [in the institution], I just thought it would be a temporary thing, and then I would see how things get on for maybe a year or so. But somehow, it became years and now it's been

about 9, 10 years now and it's a bit too late to change jobs. I would have to start at the bottom of any new career and it's a bit difficult when you have commitments and so I guess I'm stuck in this" (Lecturer/Management staff- third party institution, Malaysia)

When asked the question of whether there was job satisfaction in enhancing the student learning experience or receiving positive student feedback, the interviewee replied: *"Of course it feels good. If a student is happy or if they feel that I have helped them in any way, then that makes me happy. But that is not my main motivation now. I look at it as just a job actually, I do my best when I teach but frankly at times, it's a chore. That's why I got more involved in management in the institution, to try and branch out from just teaching"*.

In an informal conversation with another lecturer in Malaysia, it was suggested that most lecturers who were teaching full time at the institutions did so because they had not been successful in professional practice or other careers. Teaching full time offered a fairly well paying alternative career in a country like Malaysia where the larger third party institutions were successful enterprises because of the volume of student demand.

Notwithstanding, the overall impression gained is that founders and staff of third party institutions do not solely consider their enterprise and tasks as commercial in nature and there is a considerable amount of emotional commitment and investment in their roles. In terms of a community of practice this strengthens the existence of a clear domain in which the institutions exist.

4.4 Relationship with the UOL

Independent third party institutions occupy an unusual position with regards to the university. As discussed previously, their role and existence has been ambiguously acknowledged over time. On the part of the institutions however, there is recognition that their enterprise is dependent upon the UOL and the continued popularity of its degrees amongst potential students. But given that even the recent system of recognition is loose there seems nothing other than a possible community of practice to conceptualise the 'relationship(s)'.

In an earlier piece of research for an MA, I examined whether it was possible to identify the element of joint enterprise/domain between the institutions and the UOL with regards to the academic operations of the external ULP. I had identified 3 areas to be examined for commonality and commitment between the parties:

- 1) What do they perceive to be the aim of the programme?
- 2) What are their expectations with regard to student achievement?
- 3) What do they regard as the appropriate processes in meeting those expectations?

In this research thesis, it is more appropriate to consider the third question in the context of the Chapter on Teaching and Learning, but the first two questions go directly towards identifying the possibility of a domain consisting of the UOL and the independent third party institutions. The findings show that with regard to the first question, there seems to be shared commitment to the perception and understanding

of the aim of the programme. As discussed in the chapter on Assessment, the examinations have shifted from being designed to test mere recitation and explanation of accumulated knowledge to being designed to test the students' ability to apply critique and reflect upon the store of knowledge and the processes used to gain it. Interviews with academics working on/with the programme constantly repeated the idea that the programme does not seek to be a mere test for students to demonstrate their capability of memorizing doctrine and principle, but to be a test for students to demonstrate their ability to reason why doctrine may differ in seemingly similar scenarios, how different doctrines and principles may accommodate opposed interests and the possible social ramifications of certain doctrine and principles. Such a test not only serves the aim of students acquiring core doctrinal knowledge in their education but will also allow them to develop the specific skills and insights required to meet the other objectives of legal education.

As far as sharing this perception of the aim of the programme, the institutions seem to be in agreement with the UOL. This is natural considering the fact that since the commercial interests of the institutions are dependent on preparing the students to meet UOL's objectives, it does not behove them to contradict or ignore (at least explicitly) the overall objectives. This commonality was strengthened by interview data from faculty members of the institutions echoing sentiments of the UOL academics on the type of learning processes the students should be experiencing and the teaching techniques which would support the aims of deeper learning. Furthermore, from the interview data at least, teaching staff at the third party institutions largely agree and claim to support the types of processes advocated by the UOL for student learning and claim that they have, to some extent, modified or developed their teaching pedagogy on such processes.

"I expect students to have a wide education. I don't want them to go out of my classroom learning only what is in the textbook. I want them to apply what they have learnt from the books to so many other things... like how is society affected by law. I want to create a student who is able to deal with the challenges posed in society." (Principal/Lecturer - third party institution, Bangladesh)

"I expect students not to simply passively absorb material, but to be able to connect both ways with the material, to be able to give feedback about what they have learnt, whether they agree with the current position or have opinions about what the law should be" (CEO/Lecturer - third party institution, Malaysia)

"We are aware of the expectations of UOL these days...and we agree that those should be the expectations of any undergraduate programme." (Director of Studies/Lecturer- third party institution, Malaysia)

"I have changed the teaching methods here after discussing with [Former Director] in July. We have completely eradicated handing out in-house prepared lecture notes; we now have the lecturers do a PowerPoint presentation showing the crux of their lecture. We print out the slides and tell them [the students] that these are the key issues you need to take note of, and they are advised to pen down their thoughts on the side. They are expected to look up the cases or articles. It is based more reading actual cases and decisions and discussing them instead of depending on lecture notes. Instead, lecture notes are what they are supposed to take down in class and interpret."

It's difficult because the [previous] practice is to give full prepared lecture notes". (Principal/Lecturer- third party institution [no longer in operation], Malaysia)

Wenger et al (2002) also posit that the insiders' views of their identity are crucial in shaping the domain. All members in the community must share a common belief not only towards a shared purpose or enterprise but should also recognise that the other members are equals in terms of contributing towards the knowledge, values and beliefs of the community. Data from interviews show that not all UOL academics recognise or accept the notion that they are engaged in a shared enterprise with the institutions or that they face a common set of issues or understandings related to their purpose.

"...the thing that I think depresses me a little bit about the places [institutions] I've been to is that the physical nature of the facilities are often, to my mind, demoralising, you know, and I mean they're not terrible largely, well some are, but, obviously they operate on very tight budgets, right, so I think they're in a market where the students choose, basically, on the basis of cost, right. And so that... the competition they face is pretty... pretty... pretty intensive, and so they... you know, the idea that they can experiment with different types of teaching methods, invest in specialist training for the teachers, develop teaching and learning philosophies and do all of this, I mean, you know, it's just not available to them in the same way as it is to someone at UOL. The sort of challenges they face are not really what we [UOL academics] face. I mean, when we admit a student to any of the colleges, it means that the student basically has met the criteria for doing the course and they are capable to getting the degree and if they were not able to, it would be for reasons other than ability, perhaps emotional or psychological issues maybe.

But my impression is that they [the institutions] are realistically dealing with a student cohort which I think only a minority are... are... likely to pursue a successful career in law. Which doesn't mean that we should deny people the opportunity to do a law degree, right? But the standard of students is quite low, they [the institutions] realise it, they adapt the teaching to the students, and they are resistant to changing their teaching methods which they believe work, right? But it means that it's difficult to get a good dialogue with them about what UOL believes you should be doing with your students and what the students should be working towards and how they should be doing it". (CE in Jurisprudence, DCE in Law of Trusts)

"One problem we need to consider, I think, is that, do private institutions want the help and participation from our [UOL] end? Some of them actually see increased participation by UOL as a threat. The more UOL helps the students, or try to put out messages guiding the students in how we think things should be done, the institution may feel that the student has no more need for them, so there is that tension. Because the institutions are there to make a profit, which is not really what we think education is about". (Former CE in Law of Trusts, Examiner in Land Law)

"I think it's clear that any assumptions about DL students needing to be more autonomous, needing to be more reflective about what's going on need to be completely rethought, because they're not in the learning culture of sitting in QM or UCL. It needs to be rethought here because these students are very much in the grip of [their institution] and I'm not sure they know what's really expected of them, at least from the London point of view. The type of messages and goals the institutions may

want to project and achieve may not necessarily be the same as that of London”
(Former Director ULP and examiner)

I recall sharing a trip to Bangladesh with a senior member of the programme who was also an examiner and co-chair of the examinations board and member of the ELC. During this trip, an institution in Bangladesh had, during a meeting put forward the idea of having formal academic collaboration with one of the colleges in the Laws Consortium, perhaps taking the form of having dedicated lectures and academic correspondence between the faculty members of the college and institution staff and students. In informal conversation with me after the meeting, he recounted the suggestion to me with an air of incredulity at the possibility of such a collaboration taking place culminating with the phrase “as if the LSE or King’s would have anything to do with a tin pot organisation like that”.

Such data validates the views of two former directors of the programme that there exists a gulf – constituted in various and often opaque ways - between the UOL and the independent third party institutions. In the research period I encountered numerous examples from which I am happy to conclude that the perception of a considerable number of people in the ES administration (and academic circles including the VC) and in the colleges was that such institutions were not equivalent in terms of their purpose. Indeed, there seems to be an air of suspicion towards the institutions.

“And at the time I took over also, it was very much hands off from the external providers, the third party institutions. Virtually no-one [from UOL] ever went to them. My predecessor did two trips normally a year overseas. But apart from that, no-one visited any institutions and the person who was the Deputy Director of EISA at the time saw her role as writing quite antagonistic letters to institutions and telling them off when they did things like saying they had a connection to the UOL or used the UOL logo. It was a bizarre situation: informally people realised that they were essential but there was no real acknowledgment about the existence and role of the institutions... they did list institutions that were supposedly teaching for the programme in the prospectus with a warning that it did not constitute any form of formal recognition and guarantee towards quality and students were advised to investigate whether the institution was fit for purpose before signing up to one. However, the problem was that there was very much a large gap between London and the institutions so you had this paradox. On the one hand, we knew these institutions existed. We knew that probably most of the students were in institutions. However, the [perceived] model of [distance learning] at the time didn’t include the institutions”. (Former Director ULP and examiner)

In informal conversation the Director of another large International UG programme put it bluntly:

“If you have no formal relationship then you escape risk. Risk, or perceptions of risk, that was what dominated the thinking of the head administrator of the ES”

The perception of independent third party institutions as outriders has certainly been very much mediated through the years and this is evidenced by the recognition spelled out in the SED of 2006 and the SED of 2012 which states that “[t]he ULP Teaching and Learning Strategy acknowledges the important role of the local institutions” and that “[t]he approach to learning and teaching provided by institutions has some particular strengths” which “are that local/regional face-to-face provision is available and that the

teachers are familiar with the local cohort and culture of learning and teaching within their own countries. The involvement of local institutions is also highly beneficial in the local delivery of skills training (for example in the provision of highly evolved debating and mooted competitions in some cases), in the provision of remedial English courses, and in importing local perspective knowledge and thus an international and comparative dimension to the study of the Common Law". (UOL ULP, Self-Evaluation Document, 2012:55). The SED (2012:55) also goes on to reiterate that "[i]nstitutions perform a key role in augmenting local promotion and publicity for the programme and they provide a vital channel for distribution and recruitment, in addition to the support of, ULP students".

Thus, there is broad recognition that independent third party institutions are currently a vital part of the UOL ULP and indeed the SED (2012:56) points out that the programme has come to the conclusion that the best strategy to maximise resources and minimise potential clashes in cultures and expectations is to fully integrate the third party institutions into the learning environment set by the programme. However, full and equal participation in the community of practice consisting of the independent third party institutions and the UOL is hampered by the fact that the institutions have unequal amounts of resources.

"... (W)e have a variety of institutions. We have some that are very large and well-established, we have some that are much smaller and perhaps humbler and you can't, I suppose my sense is you can't, and we do set standards, of course, under our International Framework that they (the institutions) must meet, but you can't always expect the same level of infrastructure, for example, in one country as you might in another, because of the level of development of that country. And, in a sense, part of our Access Mission (of the UOL), and I think it's an important part of our Access Mission, to accept that and to say well, okay, in this country, because of its development capacity or the development stage, we can't expect it to be... to have flash premises and a wonderful car park and manicured lawns and, you know, banks of computers that we would expect and could expect in perhaps other countries. However if they want to be within the Recognition Framework, they've all got to be at the same baseline level in terms of the quality of, commitment to quality, student support, but I think I would say it's fair to say that we recognise, however, that that's always got to be seen in its context..." (Current Director ULP)

Furthermore full and equal participation of value in the community of practice can also be hampered by institutions who do not share the same ethos and perception of standards of the UOL. Wenger et al (2002) identify a well-defined domain as crucial to bringing together the members in a CoP and enabling them to develop a sense of shared purpose and identity. As evidenced by previous data, the heads and teaching staff of the independent third party institutions have stated that they strongly perceive their role as not being merely commercial tuition providers but more crucially as educators, with knowledge of and cohesion with the educational ideals of the UOL. However, anecdotal evidence picked up along the way while gathering research data showed that this may not always be the case. Some incidences stand out and shall be described briefly.

In 2006, after visiting an institution in Bangladesh (together with a senior member of the ULP who was there to conduct an official inspection visit) to conduct a lecture on legal research skills and to gather research data by observation and interview, an email

was sent to the both of us from a student of the institution with some very disturbing allegations. The student has alleged that the institution was a complete scam and was run in a very unprofessional, incompetent and fraudulent manner with commercial benefits the sole purpose behind its enterprise. Classes were arbitrarily cancelled and not replaced and what classes that were provided were conducted by tutors who were not well versed or well prepared in the subject matter. The facilities and materials that were promised to the students in the institution's marketing and recruitment material were largely non-existent or extremely minimal. There were minimal administrative staff to assist the students in liaison with the UOL and disturbingly, that the full time librarian who was introduced to us was a personal friend of the institution's owner who was brought in for the day to create compliance with the standards required to pass the UOL inspection visit. The student also claimed that he did not verbalise these complaints to the UOL staff during the visit because he did not put it above the owner to have installed recording equipment in the classrooms and since he was denied a full refund and lacked the means to join another institutions, he did not wish to create an unpleasant environment for himself for the remainder of the academic year.

In 2011 a student in Bangladesh had tracked me down privately through social media and sent a message alleging malpractice and fraud against a different institution in Bangladesh. The allegations in this complaint cited lack of resources and materials as promised and reduced teaching hours and subject options from those offered in the marketing material.

During a visit to gather data in an institution in Singapore, a group of students privately related their unhappiness with what they felt was an extremely incompetent tutor employed by the institution. The allegations included incompetence over the subject material, refusal to answer student questions in class or during office hours, dismissing classes with half the allocated time remaining and severe delays in returning feedback on written assignments. When asked if they had reported their concerns to the head of the institutions, they told me that many students had, individually and as a group representing the class, but there had been no improvement despite the head of institutions stating that counselling and feedback would be provided to the tutor concerned. Finally, after numerous complaints, the head of institution admitted that although in private agreement with the students over the lack of competence of the tutor, dismissal would be too difficult despite valid grounds because the tutor worked for an extremely low remuneration (in relation to his duties) and as such was an asset to the institutions' profit margin.

Conversely, a related situation occurred in a Singapore institution where management took action and dismissed a teacher who then took legal action. The resultant legal costs – irrespective of the merits of the action - caused the institution to post a loss for that year. Thus institutions may have serious constraints that mean that the contract with the tutor – no matter what complaints from students (even if accurate or justified) must be respected.

Encounters with incompetent or fraudulent institutions have also been experienced by other members of the ULP and they clearly regard such institutions as outsiders to the community of practice between the UOL and the independent third party institutions.

“Then there are the private colleges all over the place. Now I've been to some private colleges in England itself that are just absolutely awful as part of an inspection team to

go out in the early 90s just to see what was being taught under the auspices of the University of London and I was just really shocked.

The students... well there were some nice Bangladeshi or Indian children, really I thought of them as children, who'd never been in England before, with parents terribly proud of them, sent them over with a great amount of money to a college that was in Oxford so it sounded like the UOL in a college in Oxford. The facilities were awful! A library with barely anything there at all. We couldn't pass it on inspection of course. But the fact that people could do such a fraud! On people who have such expectations from a country like Bangladesh...who would have spent a lot of money...is just awful". (Former CE in Jurisprudence and Evidence, Former acting CE in Criminal Law)

It is also evident from the data that where the academics from the UOL encounter an institution or at least individual tutors in institutions, which they feel embrace and accord with the ethos of education as espoused and practiced by the UOL, they are very willing to recognise them as equal members in the community of practice and to share and develop knowledge.

"Then I thought the ethos of [XXX institution] was pretty healthy. I certainly thought [XXX, the founder and principal of the institution] was a gifted man, although problematic in other ways... I really like the way he grasped what the university ethos was. He used to have a devoted bunch of students who would do jurisprudence with him and he would keep telling them, we're not a training institution; this is a matter of education. I had a very good rapport with a few of the tutors in Malaysia in [XXX institution], one of them [XXX] I felt he really got it, got what it was about anyway and he was a brilliant jurisprudence tutor and I used to have these chats with him and he had a couple of students who would just meet up with him for a coffee and they would just discuss jurisprudence and debate and that was very much the style of what we would do in UOL. He put together this sort of guide...reading guide for the students to think about certain issues and we spoke about it when he was putting it together and I wrote a little foreword for it because I felt that was the type of thing that tutors should be doing... to think about what they are teaching and to put together their own thoughts on it and share it with the students and encourage the students to think about things and come up with their own ideas". (Former CE in Jurisprudence and Evidence, Former acting CE in Criminal Law)

"I mean there are exceptions and you do see some brilliant teachers, [XXX] for example, I think, at least he taught his students, or at least the good students, the ones with the potential to be exceptional, you know, in that sort of way, almost jurisprudential. I remember my first meeting with him and he was asking me about, you know, the law and trusts, and I think there was a major case just decided at that time, quite controversial and we had a beer, and he was asking questions that no other teacher ever asked me, really getting to grips with the decision and thinking about it and almost challenging it, parts of it... what the judges were saying and we had a really good discussion and this is the way you really should be going about it with students. So I think I mean it's a mixed group, but there are some definitely very good teachers in the institutions". (CE in Jurisprudence, DCE in Law of Trusts)

"I first met [XXX] when she was working in [XXX institution] and it was one of the biggest institutions in Bangladesh and she was the most senior teacher there and was also sort of the right hand woman of the principal and she was primarily the one who

ran things and sorted out the students and the students would come to her if they needed anything and she really took an interest in them and wanted them to grow and the school to grow. She was always kind of pushing them [the students] about the standards of UOL and what you need to be doing to pass the UOL exams and sitting with them in these little groups and working through the material with them. And I thought she was definitely a very valuable contributor to the programme and when she left the school and was thinking of leaving teaching, I encouraged her to set up her own institutions where she could put her experience into practice because I think the programme needed someone like her, or more like her anyway in Bangladesh". (Former Director and current examiner)

This level of interaction or mutual engagement is crucial in the formation or continued existence of a CoP. Following Wenger et al (2002:34-35): "To build a CoP, members must interact regularly on issues important to their domain...unless you interact, you do not form a community of practice. Moreover, these interactions must have some continuity...Interacting regularly, members develop a shared understanding of their domain and an approach to their practice. In the process, they build valuable relationships based on respect and trust. Over time, they build a sense of common history and identity".

The level and intensity of mutual engagement or interaction between independent third party institutions and the UOL has grown throughout the past decade and has been semi formalised into a system of official recognition by the UOL of certain institutions as approved tuition providers of the UOL International ULP.

"We now have a system of recognition for the centres and this is useful in helping us to identify market needs and patterns and useful in helping students to decide in picking a tuition provider. There is the Registered Centre and the Affiliate Centre. Registered Centres are those institutions that demonstrate acceptable standards of teaching, support and administration. Affiliate Centres must demonstrate a commitment to maintaining high standards of teaching, support and administration, so that's the difference, and all recognised teaching institutions undergo a periodic review that takes places every three to seven years". (Current Director ULP)

Research data has also shown that founders and staff of independent third party institutions have long championed the need for greater interaction with the UOL, especially the academic involved in the course and examination design and assessment and they are positive towards any initiatives of greater and more frequent engagement.

"Institutions are used to doing their own thing. Anyone can offer tuition for the programme, there is not much central direction. Any kind of interaction we have with the academic staff there has usually always been initiated by us. We or at least [XXX Institution, our headquarters in Malaysia] started out quite a few years back by privately inviting lecturers or examiners from UOL to come and give guest lectures or guest revision sessions after they stopped organising it on their [UOL's] part. And in this way we started have some rapport and dialogue with the academics and we had a better idea of how things were. Then, [Former Director] took over and he was very much into meeting the people in the institutions and he came out often and we were able to tell him how things worked in our countries and our issues with certain things and he was definitely very helpful and we felt that we had more of a place or recognition within the

programme. I think they are starting to do more now and there are definitely more things that can be done. Maybe things like Permission to Teach, accreditation. Seminars, conferences conducted/organised by UOL to bring the separate institutions together". (Principal/Lecturer- third party institution, Singapore)

Yet the Former Director reveals some direction from London:

"In Bangladesh as soon as an institution gets good reputation, staff break off and create another – at least that was the way they grew. There we were facing a list of people pushing me to get them recognition to teach the diploma. I said No! Four institutions is enough! One went and split so we have five but I told all interested others we had enough.....Unfair? Perhaps, Realistic? I think so... "

Views from institutions often sought greater interaction:

"I think there is definitely a need for greater interaction and formalised interaction. The main issue is due to the market in Malaysia. There are a few institutions offering law degree courses from different universities in the UK on a twinning basis, where the students actually attend seminars conducted by the university's academics and they submit coursework and are given feedback and they read for their final year in the university in UK itself. So in that sense the students on those programmes feel a much greater affinity with their university and you have to overcome that with prospective students. Because UOL is now not the only law degree provider, even though they are very well known, but the students or their parents want to see the involvement of the university with the actual institution where their child will be studying. I think from experience with the UOL LLM, students may identify better if there is a lead college to provide direction, like UCL or QM. The term external causes a lot of problems in the market and also to the authorities. Laymen tend to be suspicious and have the perception that the quality is not as good". (Principal - third party institution, Malaysia)

"It's better now than it was before. When I started, London was terrible, in the sense that you could not communicate with them at all. Even if it was just a simple administrative issue on behalf of a student, you would be calling and writing for ages and never get a reply and it was very frustrating and tiring. These days there seems to be more structure of who is handling what duties over there and you know who to direct your enquiry or problem to, and I suppose with email it's easier to communicate quickly as well. I think [former Director of the ULP] definitely started off the trend of more interaction and in a quite casual way, so you felt quite open to talk to him when he comes out and I think you get a lot more things across that way and you can talk freely and I think it has helped as he seems to have taken on board quite a few of our concerns or complaints." (Director of Studies/Lecturer - third party institution, Malaysia)

"As to current interaction? Excellent. I think the support has been extraordinary and even before this whole scheme about the registered centres and all. Of course, there have been certain things, like before when we tried to intervene on the students' behalf, but we had no real status and we had to let the student get on with it on their own. But now with the registered and affiliated centres, it is more free flowing, or two way if you want to call it that, and when people sign up and put us as their centre, it works two ways: because a lot of our students are professionals, 95% work and it is hard for them to be making calls or sending emails during their work time. So when they need answers for a certain issue urgently, they would want us to contact London and speak

or intervene on their behalf. But what we found is once we build a rapport with the persons there, once we get to know them, like who's the librarian, dispatch manager etc, then it becomes very easy to send an email or make a call and the issue gets resolved very quickly. And also the visits have been very good. You know the accessibility to people like [Programme Manager] and [former Director ULP] and all that. So I have nothing but praise. I think the support has always been there, I mean even before the institutions had registered status, we were given support like allowing the institutions to have their own VLE login. So I'm trying to think now if there can be anything lacking in terms of support and I can't really think or fault anything off the top of my head at this moment, so it's very good on this point". (Principal/Lecturer - third party institution, Jamaica)

The UOL has also held a number of providers' conferences since 2007 designed to bring together the various independent third party institutions and academic members from the Lead Colleges as well as other staff members from across the UOL International Academy in order to network as well as discuss, share ideas, voice concerns and contribute on planning for better solutions and innovations for the future. These conferences have been very well received and well attended and the delegates from the third party institutions who have attended have expressed the view that sharing experiences with their counterparts from different countries and with UOL staff have enabled them to realise that they face common problems and share different solutions. They also feel that presenting their views as a united presence to the UOL has resulted in more legitimacy than voicing ad hoc anecdotal complaints. Feedback gathered from the delegates who have attended the conferences stated that they left the events feeling energised by new ideas and that it was very conducive to sharing and learning in the candid and open atmosphere in which the conferences took place. Importantly, the delegates also stated that having actual face time with members of the UOL was crucial in sustaining their commitment towards being equal, recognised and valued members of a CoP. On their part, the UOL has emphasised the value that such conferences have brought towards their understanding of the intricacies of individual local markets in which the ULP has a strong presence. The views of the independent third party institutions have been crucial in helping to design plans on future actions in terms of marketing, teaching and learning, continued professional development and enhancing students' experience.

The UOL seems committed towards continued engagement with independent third party institutions and are willing to arrange a variety of conferences and seminars of varying scales both in London and in individual countries, however, they do acknowledge that despite the value of and the expressed eagerness on the part of the institutions for greater mutual engagement and interaction, their ability to provide or facilitate that level and frequency of engagement is hampered by certain practical constraints.

"We do, we have started doing more things [in relation to greater interaction with the institutions]. For example, last year we had a tutor workshop in Ghana, and I think something like that has been done before in Bangladesh and Singapore and we want to continue that process with institutions, and we also do that as part of our, we try and include part of that in our Providers' Conferences as well. And we have another one coming up in Dubai and we will be looking to do something around learning and teaching at that as well, so yes, you're right, we need to be doing more, yeah. I mean,

we do hear about that a lot [from the institutions]. That they'd like us to visit a lot more often, they'd like us to offer lecturers to go out and teach on the Programme. They want more assistance with marketing".

Q: Okay, can any of these be met by the University, or are they not feasible?

A: *"Well, everything has a cost. And not only a cost, a time commitment as well, so to send academics out to every institution that wanted an academic to go and visit would increase the costs substantially for the students and would have an effect on, you know, I think once they realise that, although they [the institutions] say oh well we'll pay, but then, I mean certain institutions can pay, so what happens to the others which may not be able to pay that rate? So there's an issue of fairness and equal access there and I think we have to be careful about doing that, to not be seen of perceived as favouring or having a closer relationship with certain institutions, which is why we introduced the Regional Revisions so that we can try and give as many students access to the academics as possible, also using things like Illuminate or Blackboard Connect, I think it's called now, it gives us a wider reach so we can deliver more real-time sessions to all students without having to go through the institutions". (Current Director ULP)*

However, it may also be worth noting that perhaps it may be wrong to assume that it is a common goal or intention of all independent third party institutions or all the teaching staff in the institutions to be members of a community of practice with academics of the UOL. Interview data from some members of staff in third party institutions indicate that although they pay lip service agreement to the pedagogical ethos and teaching and learning techniques espoused by UOL, in private they define their domain rather differently.

"I don't know why London is suddenly on this sort of rampage about teaching students in a certain way. They didn't use to care how we were teaching the students and then suddenly there's all this emphasis on activities and getting students to contribute in class and do exercises and group discussions. If students want to do that, they certainly can and they have always done, in their study groups and all. But as far as I go, my job is to teach them and that's what they want from me. There's a certain level of spoon-feeding and I hate that word or I hate the fact that it's seen as a bad thing. I've been doing this for a long time and I know what students want and what they need and to be honest most of us [the teachers] do this despite what they say about teaching in the London style and the students do well. Most of them get the second class and they go on to do the [professional qualifications] and practice. Those who do better were going to do better anyway because they are exceptional students and the bad ones, no teacher can help them. To me, our method works even though it may be seen as out-dated. But students here have been taught this way since primary school and they are used to learning this way and they cannot adapt or don't want to adapt to a new style and frankly, for London to say this is wrong and we should be doing things another way, I think is insulting and part of the colonial mentality". (Lecturer - Third Party Institution, Malaysia. Transcribed from contemporaneous notes taken during informal conversation)

"I don't really pay much attention to what [Former Director ULP] says. I know there have been changes to the subject guides and they have issued a guide for teachers and I have looked through it but I don't think the goals and methods they are saying are

practical for us here or at least for me. If I tried to emphasise independent research and reading source judgements, the students would be furious with me. They have so many difficulties as it is and they rely on us to make things as easy for them as possible. London thinks that we make things easy for the students and they don't really do any work but they still do a lot of work. It's not just memorising, it must be done in an intelligent way and the student cannot simply memorise without some level of understanding, such a student would fail anyway. So I don't think we are producing students, those who do reasonable well anyway, who simply memorise without knowing or understanding the law. I am not too concerned and I don't think the students are too concerned either, with the abstract philosophy of it, of what a legal scholar is or should be. It's about passing the exams and if it can be done with shortcuts, then fine and I would help them find those shortcuts if I can. I am not too concerned with what London thinks is good or bad teaching or good or bad students. To me, good teaching is when students are happy with it and they do well in the exams. A good student is one who does well in the exams; I really don't care about his methods of learning or studying". (Lecturer- Third Party Institution, Singapore]

"It's quite strange in a way. You asked me previously what I thought London's expectations were and were they the same expectations we had, and in a sense, broadly, I would say that London and us here at [XXX Institution] share the same expectations, which is to do well in the examinations. And all the while I thought we all shared the same goal and that we were achieving that goal really well. As you know, at [XXX Institution] students have been getting generally good results and we also have produced some students with firsts [class honours] which is so rare in the External programme. But now there seems to be a separation of goals or expectations. London wants all this skills and independent work and activities and it's supposed to enhance the students and help them to do better and I suppose it will. But it's difficult to sell it to the students. What the students look for is whether your system produces the results or not and perhaps one of the drawbacks in [XXX Institution] has been that our current system has been producing the results all the time. So for us to come up with something entirely different may be a bit difficult. So that's where London has different concerns and expectations from us. London wants to produce the all rounded students where the learning process itself is as important as the results, but our students only care about the results and they know that the current method gets results so they are very suspicious of anything new. At the end of it, we do have to maintain our commercial appeal for business and so we have to keep them happy and to London that may mean in [UOL's] view short changing them on a "proper" way of learning". (Senior Manager/Lecturer – Third Party Institution, Malaysia)

"It's quite strange in a sense when I know most of us say that we want more support from UOL or we want to align ourselves with what UOL wants or expects, but when there is actual attempt of help or engagement from UOL, you know when they actually come down to our front line level and try to arrange things, then it doesn't seem to be well received in a sense. I mean there have been some attempts here to set up a tutors' workshop to discuss teaching techniques and all that and it was not well attended at all. So it's quite interesting because there is a demand but when it comes to actually following through then the people [from the institutions] don't seem too interested. I don't know about the other countries but here the lecturers seem to take it as a chore. I think it's because they are not getting a direct benefit out of these seminars or workshops".

Q: When you refer to lack of a direct benefit, do you mean lack of a direct financial benefit?

A: *"Yes, in a sense, I mean the teachers are not being paid extra to attend these sessions out of their working hours and they feel as such it's an extra load and perhaps that may be a very narrow way of thinking about things, Also from the part of the UOL, they do not get recognition or credit for doing it. I mean, the UOL does not really differentiate in terms of tutors and there is no formal accreditation to become a teacher on a UOL programme. I think that would be a motivation. Suppose if they, say for example, plan a scheme where in order to maintain a license to run your programs you have to attend x amount of training or these workshops. If they put a sanction in place we would comply. I think in our part of the world, we are quite materialistic in that sense that people want to receive a tangible benefit out of any activity and it's no use talking in the abstract about the value of expanding horizons and added value. Yes we are going to learn but it would be good if they get some benefit out of it, such as we will now award you these approvals, special status as an approved teacher sort of thing. In fact I know some other part time programs in Singapore. They actually make local teachers, what they call associate or affiliates with the university. And they are supposed to maintain that status. They have to go for a certain amount of training hours. People don't like it, but in order to maintain that position they will go for it. And it works both ways because on one hand the lecturer has now improved as a lecturer because there are certain skills the training has now confirmed. At the same time there are also benefits to the university because you have got a better lecturer". (Deputy Principal/ Lecturer- third party institution, Singapore/ Malaysia)*

On balance, despite some differences in perception of the proper role and methods of the independent third party institutions with regards to teaching students who are reading for the UOL International ULP, it is possible to identify a domain within which the UOL and the independent third party institutions exist and share a common identity. Such identity is directly linked towards shared commitment to ensuring that students obtain a good undergraduate degree in law, although there is evidence that there may be some difference in the approach towards fulfilling that commitment, it does not necessarily negate the existence of a CoP.

Wenger et al (2002:35) stressed that while the concept of community often connoted commonality, it was wrong to assume that the hallmark of an ideal CoP was homogeneity. A common history and communal identity arose out of long term interaction, but that interaction also encouraged differentiation among members. "They take on various roles, officially and unofficially. They create their own specialities or styles... In other words, each member develops a unique individual identity in relation to the community. Their interactions over time are a source of both commonality and diversity. Homogeneity of background, skills or point of view may make it easier to start a community of practice, but it is neither a required condition nor is it a necessary result. In fact, it is not even an indicator that a community will be more tightly banded or more effective. With enough common ground for ongoing mutual engagement, a good dose of diversity makes for richer learning, more interesting relationships, and increased creativity."

4.5 Relationship between Third Party Institutions

Is it possible to identify a CoP consisting of independent third party institutions? On this issue, it is much easier to clearly identify a defined domain. Research data quoted previously in this chapter show a high degree of commonality in the motivations behind the founding of the independent third party institutions and their continued existence. It is clear that the institutions were founded based on the identification of an existing unfulfilled need in the respective countries. Interview responses from institutions founders highlighted the popularity of the UOL ULP in their respective countries and saw an entrepreneurial opportunity in setting up an enterprise to provide tuition support for a fee. There is also commonality in the perception of the value of the enterprise, the recognition and acknowledgement that although they are engaged in a commercial enterprise and are largely driven by commercial pressures, commercial or monetary gain is not the sole or even overriding factor. The research data show that the founders and salaried teaching staff are driven by concern towards the educational welfare of their students and genuinely wish to make a positive and valuable contribution to the educational experience of the students.

The institutions share common experience in their dealings with UOL policy and regulations, and their dealings with student needs and amongst institutions in the same country, they share common experience in dealing with local governance and regulatory practice. It is within this shared experience that the independent third party institutions negotiate their commitment towards their domain.

The level of mutual engagement and interaction between independent third party institutions within the same country is high and this has enabled them to develop a shared practice that is unique to the community. Although for obvious commercial reasons, each institution will try to develop and market a niche, in terms of their general function and operation they exist within a common domain and accordingly develop a common body of knowledge. This is in line with Wenger et al (2002:38) who determine that one of the tasks of a shared practice is to establish a baseline of common knowledge that can be assumed on the part of each full member. They stress however: "This does not mean that all members are cognitive clones. People specialise and develop areas of individual expertise. They may belong to slightly different schools of thought. But they share a basic body of knowledge that creates a common foundation, allowing members to work together effectively".

One very obvious way in which the independent third party institutions demonstrate the building of a shared practice is through their manner of recruiting and training their teaching personnel. The majority of the institutions which were studied in the fieldwork recruited their teaching personnel from the ranks of former graduates of UOL ULP and specifically in most cases, graduates who had undergone their tuition at the same institution at which they were now being recruited for employment. Interview data quoted previously in this chapter has highlighted some rationale behind this practice. The Head of an institution in Jamaica stated that she recruited from UOL ULP graduates or at least graduates with an English law degree due to their familiarity with the intricacies of English law. Several other institution heads and staff who were interviewed stated that they recruited or were approached for recruitment due to the desire or need to obtain teaching staff that were familiar with the teaching techniques of the institution and expectations of what constituted good teaching amongst students of that institution.

"Most of my teachers are my former students and all of them are UOL External graduates. I think this is better because they are not only familiar with the subjects but they also know what Bangladeshi students will expect because they were themselves in that position and they have had the example from their own teachers. Most of the time, the students will approach me to look for teaching when they finish their degree or I have approached a few who I think will be good teachers. They would go into practice but it is normal in Bangladesh for lawyers to do some teaching part time. As you know, almost all the teachers are practicing." (Principal/Lecturer- third party institution, Bangladesh)

"I have to say my best teachers, or at least I should say the teachers that get the best or most positive feedback from the students are those that have graduated from our institution. In fact, I try to stick to that these days. I think it's because they have seen what they consider or recognise as good teaching when they were studying here [at the institution] so when they start teaching, they emulate the style of the teachers who they think were the best, so you do get a very good cycle in that way. I have hired teachers who were not previously students and quite often it has not worked out. They would be unfamiliar with what our students require or demand or perhaps to be fair, they may not be familiar with what we have promised our students to expect. They may have been trained in a different style or technique. I know that this does not mean they are bad teachers or do not have good knowledge of the law, but you do get a lot of complaints from the students. From their [the students] point of view, here is a teacher who does not... sort of, fit with the rest of their teachers, it's a different style, they are not used to it, they don't want to or are too lazy to try to get used to it, they feel uncomfortable, whatever. And here as you know the students are not shy about making their feelings known when they are unhappy, so then that spills over to the teacher concerned and it gets awkward and difficult all around. Then either the teacher adapts to the preferred style, or they continue and then you get more complaints and then finally they usually leave. As you know, the ones that have been here the longest and the most successful were all former students". (Principal/Lecturer- third party institution, Singapore)

"I think now in Trinidad we are having the second generation of teachers, so to speak, and they are the former graduates who have undergone the programme themselves and see the benefits. Also, this programme is growing in Trinidad with the encouragement the government is putting on further and higher education so they [former graduates] do see it as an attractive field to start employment. It's very good in a way that the students when they become teachers can already know the expectations of the students and also can guide them in the specific things which UOL may require". (Principal/Lecturer - third party institution, Trinidad. Extracted from contemporaneous notes taken during conversation)

The fact that the independent third party institutions acknowledge that they have developed a specific, identifiable technique of teaching that is marketable and preferred by the students and that such technique is refined and spread to new members who join the community of teachers, who then take on board this technique and perhaps add to it while essentially maintaining general practice exemplifies the existence of a CoP. The concept of CoP was built on expansion of Lave and Wenger's (1991) theory of situated learning. Lave and Wenger incorporated a number of linked theories that focused on the whole person and on the relationship between that person and the context in which they learn (Resnick, 1994 as quoted from Maynard, 2001). A person

does not learn as an individual but instead, does so through a process of participation within a community engaged in shared enterprise. Following Maynard (2001), the learner initially participates peripherally in the community but gradually increases in engagement and complexity of tasks towards full participation and as such both absorbs and is absorbed in the culture of practice generated by the community. With greater involvement in the community, the learner receives and is provided with different forms of information, not only about how to proceed, but also about meanings, norms, and ways of knowing that are specific to that CoP. Lave and Wenger (1991) deem this form of learning as being essentially cultural. In this context, every teacher working in an independent third party institution is a member of the community and learns within the culture of the community while also adding to its shared repertoire or practice (as termed by Wenger et al, 2002) to provide a base for learning for any new teachers who subsequently joins the community.

Although Lave and Wenger (1991) theorise that full absorption is the best way for learners to familiarise themselves with the culture of the community and that the best way to accumulate knowledge is through actual active participation or mutual engagement with the rest of the community, there may be drawbacks to the cycle of graduates being drawn back as staff into the CoP of teachers in independent third party institutions, thus further entrenching a culture of learning that they were exposed to as students. As identified by Wenger et al (2002:141): "In a tight community a lot of implicit assumptions can go unquestioned, and there may be few opportunities or little willingness inside the community to challenge them. The intimacy communities develop can create a barrier to newcomers, a blinder to new ideas, or a reluctance to critique each other...The very qualities that make a community an ideal structure for learning – a shared perspective on domain, trust, a communal identity, long standing relationships, an established practice – are the same qualities that can hold it hostage to its history and its achievements. The community can become an ideal structure for avoiding learning."

This drawback may be evidenced by research data quoted earlier where lecturers in third party institutions stated that they felt it was pointless or unfair of UOL to try to inculcate new values or techniques in pedagogy when they do not have front line knowledge of the conditions of teaching or the demands of student requirements on the ground, referring to it as a form of throwback to imposition of colonial superiority, or the inability to be cognisant of the value of attending extra mural teaching workshops because of the placid acceptance that the teaching techniques currently employed are sufficient since there is no tangible reward to attendance.

This drawback has been observed by UOL academics who have had interaction with the independent third party institutions and also by members of the institutions' teaching staff themselves.

"I think there had been a sort of culture that has been built up [which] I think it's quite rigid and unimaginative and it just gets done because there is this notion that it works and to try anything else would be a threat. What do I think the institutions need to be doing? Devise some means - although we have thought about these things - of setting and marking creative essays... getting the message out to the institutions about how they've got to stop spoon feeding and increase concrete guidance like more tutorials, more discussion, fewer lectures, less teaching altogether unless it's in the form of discussion and marking.

More general reading, less obsession with topic picking to encourage students to think that the three years that they're spending to do a law degree is not just three sets of three terms; it's actually a reading programme over three years which includes the vocation and should be thought of as a full time development of your own personality, often a very crucial stage of your life. Think about your job afterward, think about your certificate afterward, but think about the degree as genuine education not training. I must be right. You say this to people, everybody nods, but yet no one really seems to put it into practice. They say they can't because they are constrained by student demands, commercial risks and all that. I think that's just unimaginative. Think of something different. Don't pander to the students. Pander to the customer when you're selling silly things like iPhones and so on. If they want white iPhones, make a white iPhone. But education is different. For education, the students should already want what you are providing because you believe in its quality". (Former CE in Jurisprudence and Evidence, Former acting CE in Criminal Law)

"My impression is that they [the institutions] are realistically dealing with a student cohort which I think in which a minority are... are... likely to pursue a successful career in law. Which doesn't mean that we should deny people the opportunity to do a law degree, right? But the standard of some of the students is quite low, the institutions realise it and they adapt the teaching to the students, and they are resistant to changing their teaching methods which they believe work, right. Because in their view it has worked and it gets majority of the students through the examinations in a very safe but unspectacular way. In a sense that is a sort of success on their part but I think there is more to education and teaching. But, but I do realise that their method has evolved out of a necessity of sorts, which is not necessarily bad. But it means that it's difficult to get a good dialogue with them [the institutions] about how you can tell your students to do certain things, or how you help them to deal with the amount of primary reading". (CE in Jurisprudence, Deputy CE in Law of Trusts)

"It's only in a small number of institutions that you have full time lecturing members of staff. It is often common to find people who are doing this on top of being a practising lawyer. In Bangladesh you have a handful of people who are indeed full time where they do this as their living and they often are then running an institution and doing this. It is more common to find teachers who are practicing barristers. This causes sometimes issues that they perhaps are not up to date on the syllabus. But it's not just Bangladesh, even in some countries where they do have full time teachers; some of them have been teaching for so long they have grown into a rut. They often, however, are trying to make it interesting to teach by giving local flavour which is good but of course it is not necessarily reflected in the exam questions. Many of them are in a critical cycle where for them to be seen by the institution as good enough to be kept on, students have got to think they are good. Now, what does it mean for the students to think they are good? Often it means that they seem to be giving the students what the students want, now what if the students want to have their hands held, to be given model answers? It may well be that the style of the teaching that students regard as good is not at all the style of teaching that we in London would regard as good because it leads to rather passive learners where we would be seeking active learners and this is often reflected in the exam performance where you get variations on models answers or you get repetition of material that clearly has been provided by the institution and the student clearly doesn't understand the real meaning of that material. This is where we have the constant problem of ideals of teaching and the realities of

practice I suppose and it's hard to penetrate that cycle and be daring and be the institution to make that change". (Former Director ULP)

"I know London is always complaining about teaching methods and there being too much dictating and memorising, but here it is regarded as effective teaching. In fact, English medium schools are sought after because of this practice and they [Bangladeshis] believe that this is the effective way to pass English exams like A levels, so they want this style to be continued even into their degree. All the institutions here are practising this style and some of the teachers teach in different institutions so they bring the same methods at each institution. The students have come to expect certain things from what they hear from their friends or seniors, so it has to continue. I don't think things will change anytime soon. I know it wouldn't be successful. Take a look at [XXX Institution], the head tried to do things in the London way, with small group discussions and activities and they did not want to provide notes to the students, wanting the students to make their own notes. She may have good ideas, I don't know, but that institution is the smallest institution with the lowest number of students and it is not doing well and many of the students leave. I believe that it only attracts students who have no other option because they have lowered the fees so greatly". (Lecturer-third party institution, Bangladesh)

"When new lecturers join I know whether they are going to make it or not. Those who learn from the senior lecturers and do things in a certain way will survive. The students are very demanding and you have to give them what they want, which is to make things easy for them or at least so they feel that things are easy for them. It's the usual things, they want summarised notes, and very importantly answer outlines, tell them the important cases and structure it for them. I have seen lecturers who have tried to do things differently, or try different methods and because they are in a minority, it sticks out and because the students are not used to it or they don't see other teachers using those methods, they think it is bad and then the complaints start. You see the good teachers or the ones who are well liked by students are the ones that teach in the traditional [XXX Institution] style". (Lecturer- third party institution, Singapore/Malaysia)

These comments also exemplify what Wenger et al (2002:146) terms as the defect of egalitarianism "where it becomes difficult for any one member to take risks or engage in any activity that would distinguish him or her from the rest of the community".

Narcissism is another defect that has been identified: having enjoyed success in their participation in the community, certain members may become overly concerned with their own interests and agenda and may pursue those without regard of the collective interests and well-being of the community (Wenger et al, 2002). From my own previous experience in working as a lecturer in third party institutions involving teaching in several countries, I have come to be familiar with what can be termed as a cult of personality, which some lecturers enjoy and actively cultivate among the students. While it is natural to want to be respected among one's own peer group and enjoy senior status within the community of practice, some members use subtle tactics to preserve their own standing within the community by denigrating other members. Through personal experience and anecdotal evidence, it is learnt that some lecturers in third party institutions criticise the techniques of their colleagues, or emphasise their lack of teaching experience, or encourage students to skip lessons conducted by their rivals in favour of their own.

“Sometimes these things really get out of hand. If you have [XXX lecturer] doing a class then all students will want to attend that session and if their timetable schedules them for the same lesson conducted by another lecturer they start complaining... everyone has their own spin on things or quirks, but no one is getting short-changed and students really should not be dictating who teaches them. The lecturers themselves take advantage of this. You have seen for yourself that when a lecturer has a solid following they use that to threaten the management to get higher salary or more benefits or preferential treatment at work, if not they threaten to leave to the rival institution and the students will follow. But you do have people in management who will always give in to the student demands no matter how ridiculous they are”. (Lecturer-third party institution, Malaysia. Anecdotal evidence recorded from contemporaneous note taking during non-interview conversation)

“I do not like a fan club attitude. I know this goes on in some of the other institutions. Any teachers who takes a class is expected to provide the same standard of teaching to the students. I do not want some teachers to be regarded as more effective or more entertaining than others. That is why I am in charge of the course plans and I make them uniform. In Bangladesh, the fan club attitude has affected the programme. You have teachers breaking out on their own, starting new institutions because they think that they have a solid, loyal group of students and thus their fame will spread through word of mouth and they can survive on their own and that has caused instability and negative impact in terms of the commercial impact”. (Principal/Lecturer- third party institution, Bangladesh)

“The problem that we face here and it is a serious problem, is that we have these tutors who tell the students privately, sometimes without the institution knowing and against our wishes that they have something which they term as ‘magic notes’ or they sell it as such. These are notes or essay answers which they have prepared and they guarantee, guarantee (!) the students that if they study from these notes, memorise them wholeheartedly then they will definitely pass the exams. And they will have previous students who by some chance would have passed with this technique or think it is this technique which helped them to pass and will recommend it, so such a teacher will always have fans. Even if you prohibit them from doing such things, they will simply tell the students that if they want those notes to attend with them for private tuition and you have students who will go for private tuition and end up paying another set of fees. There is no way that we as institutions can prevent this. I know of teachers who are doing this in my own institution and others”. (Principal/Lecturer - third party institution, Bangladesh. Quote taken during contemporaneous note taking during dinner meeting of institution heads in Bangladesh organised by UOL)

This evidence also seems to point towards the existence of another defect in CoP, that of imperialism where members of the community are “not open to alternative views, outside experts, or new methodologies because of their passionate belief that their perspectives are the right one. They need to be exposed to other perspectives in the context of real challenges that go beyond their domain and to problems that can be solved only by combining multiple approaches”. (Wenger et al, 2002:142). Imperialism may also lead members in a CoP to view with suspicion or disdain any new entrants to the community, where the established members feel that new entrants have to agree wholeheartedly and be absorbed into the existing practice and culture and that any deviation or the addition of a new perspective is inferior to the body of knowledge that

they have previously established. This has been evidenced in anecdotal evidence from senior members of institutions where there has been a new entrant in the local market. An institution head in Trinidad stated quite candidly he did not think a relatively new institution would survive for long because the heads were young and inexperienced and lacked what he felt was the necessary gravitas and local standing to attract a following of students.

Factionalism is another possible defect: Wenger et al (2002: 143 -144) argue some communities “are torn by internal strife over the definition or scope of the domain, with individuals or factions fighting for their own special interests, approach or school of thought. Members can be consumed by these internal distinctions and spend more energy emphasising differences with others than moving forward with practice development”. This can certainly be evidenced in research data which provides scenarios of industrial espionage between third party institutions, unethical marketing, and general petty trouble making amongst rivals.

“It’s well known that our rival institution has spies in our college... students which they have been paid to come and attend at our place and then report back to them and give them copies of our materials and so this way they can keep up with what we are doing and know what is happening. In the same way, we do have people who know things which are going on in their camp. Some students are naturally overzealous and will register and pay fees at both places to try and get the best of both worlds and from those students we can also find out things about the other college. We are not really worried as we have our own branding and reputation but we still have to stay competitive”. (Director of Studies/Lecturer- third party institution, Malaysia)

“Here in Trinidad our hands are tied to a certain extent. As you know, the government pays for eligible students to obtain tertiary education so they will pay the students’ fees at our institution if the student is eligible. So institutions will encourage students to hop around or change schools at the drop of a hat, the minute they are dissatisfied over any minor thing, real or imagined and the student will do so as it does not involve any additional cost to them. In this way, they encourage an environment of instability among the institutions, where we cannot build a niche or customer base if students do not give things a chance”. (Principal/Lecturer- third party institution, Trinidad. Quote taken from contemporaneous note taking during conversation)

“It [factionalism and unhealthy competition] can be reflected in their marketing literature where one, if there’s heavy competition for students in a particular city, for example, their marketing literature might be more of the, what I would consider to be negative marketing, rather than positive marketing and they might sort of subtly try and, in other words instead of saying we do this, this and this, they might say we do this, this and this better than them, without actually sometimes naming them. But also they will, there’s a concern sometimes that they will say things to students, or prospective students, about the other institutions, in order to try and entice them. So competition can be unhealthy. They might also be tempted to exaggerate, in some way, their results by conflating information together in a way that’s possibly misleading”. (Current Director ULP)

“This was a longstanding issue. The rapid expansion of student numbers in Malaysia in the 1990s led to a bitter, one might have to call it, competition between some institutions. Yes, the advertising was sometimes, if not untruthful, certainly always spun

results etc. in the strongest way possible. One example would be when an institution would claim we had 36 2(1) at Part 1, what they actually meant they had 36 individual subjects – students in 36 individual subjects had obtained 2(1) marks but it made it look as though they had 36 student who obtained a 2(1) across the board for that year. The advertising was very vicious. It was also clearly putting off certain members of the Malaysian legal academies because the owner of one of the institutions drove sports cars and had almost a fleet of Mercedes and BMWs and Jaguars and it made out that he was earning a phenomenal amount of money – well he certainly was earning a good amount of money. It turned out later that most of these cars were on hire purchase and indeed he never paid for them and he went bust in the end, but it was anecdotally put to me by the Dean of the Law School of the University of Malaya who said “what am I doing driving a beat up Proton when that guy drives so many flash cars?” So, it did evoke perhaps jealousy, hostility and it was certainly not good that there was this flamboyant highly charismatic self destructive leader of one of the institutions.

And then you had one thing that happened a while ago was that clearly an administrative member of staff at one of the institutions was headhunted by the rival institution and when he went over he went over with all the contact details of the students. At exam time the rival institution used all those contact details to contact the students on their mobile telephones to offer them incentives to go across to them.

And this is unhealthy because it interferes with student expectations, it interferes with the messages from London and it can lead to people in power thinking that these institutions are more problems than they are worth and that of course reflects back on London”. (Former Director ULP)

“We have in the last two years tried to run revision courses in Bangladesh. These revision courses have not been as successful as one would like or as successful as the market would warrant and the single important reason is the institutions are reluctant to send their students along to the revision because they fear their students being poached or coerced or stolen as one put it by institutions seen to be organising the arrangements”.

Q: But it is organised by London, isn't that neutral?

A: “Yes, but to carry out the practical arrangements in the country of Bangladesh you need local people and the only people who were willing to do it at a very reasonable fee were one of the institutions. So, last year where we had more students at the revision it appears that some 20 of the second year student that attended the revision were talked into transferring at the end of the year to the institution that was seen to be part of the organising of that revision”. (Former Director ULP)

“I think it's tremendous for an institution to be able to get the University of London professors and lecturers there. I think I had a status there at one time, Professor [XXX from UCL] and so on. I think there was a lot of jealousy between the colleges and so on. But it was so important. You see the effect on the students. They know that they weren't allowed to know you were an examiner, but if they knew that you were from the University of London and you'd written the study guide it made a tremendous amount of difference in the fact that their institution managed to bring you over to lecture for them”.

Q: Do you think it leant a certain amount of legitimacy to the institution in a sense?

A: *"I don't know, I've never really quite known. I tried to enquire what the politics of this whole business was and I got a feeling that they were pretty serious. The last time I went a guy stood up in one of my classes and denounced me. He was shut up by all the students. Yes, it was absolutely extraordinary. [Institution Principal] said he's from a rival college. This guy just got up in class and just made a scene. He shambled in very, very late and said, "where's the paperwork?" I said, "I don't know if you should be here". Then about half an hour later when I was lecturing on Offences against the Person Act he stood up and announced to all that 'this lecture is not telling anything you couldn't know from a book. I don't see why you pay money to come and listen to this person'.*

I said, well get out of my lecture and he went away, but he'd obviously made a political point and he wasn't an ordinary student - he was much older than the rest. I'm confident enough in my lecturing to know that it wasn't so bad as to justify something like that. I went to see the [Institution Principal] about it and some of the students were very upset indeed. [Institution Principal] I think identified that he was actually a spy sent from the rival college to come and disrupt things. Does that make any sense?"
(Former CE in Jurisprudence and Evidence, Former acting CE in Criminal Law)

Despite the evidence of factionalism which may be detrimental to the well-being of the community of practice, there is also strong evidence that the members in the community are willing to strengthen mutual engagement when they face external threat to their domain.

A good example would be the united efforts of the heads of several institutions in Bangladesh in bringing up a court action to defend against the Government's attempts to shut down their operations by implementing regulations in such a way to misunderstand their operations [Identifying them as 'Branch Campuses'] would make their operations illegal.

"It goes back to the fact that the institution arrangements of the UOL external system or international programme do not fit into the boxes of collaborative arrangements that the UGC recognised. Bangladesh used to have a very, very, very small area of private education. Its state universities were well regarded. Over time the private education sector has expanded. This caused the drafting of a new education act specifically designed to regulate the private sector. That's all very well and fine. However, it only recognises private universities or the campuses of overseas universities that are in some kind of franchising arrangement. These two groups then expected to pay a very, very significant amount of money as a – what's money when you give a tie, you know, for permission to operate – but the teaching institutions that are linked to the University of London external programme are very small and are not individual universities, private universities in their own right, nor are they campuses of the UOL, they are simply private tuition providers, so they didn't fit in the box. However, the fact that they didn't fit into one of these two categories meant that they were deemed as operating illegally and a list of institutions that were deemed to be operating illegally were posted, and at one time, I think all the institutions in Bangladesh were on the list, and they were ordered to shut down.

Okay, they got together and the heads of [XXX and YYY Institutions] were the primary leaders and they represented because they were well regarded lawyers as well, and they went to the High Court and gained an injunction to continue; however, every time

the list of institutions operating illegally was published it always contained one or more of the institutions that were supporting the UOL students. They have made submissions to the Ministry of Education on several occasions to revise the legislation so that they could be fitted in, and the matter is ongoing and the root issue is, however, that simply the UOL arrangements simply do not fit into the traditional boxes, they are neither a collaborative franchise arrangement nor are they a giving or crediting another institution to do your degree, it is sui generis as they call it. But I tell you it did bring them together at least in pursuit of this common cause, yes; otherwise they are as you know very competitive". (Former Director ULP, current examiner: reinforced by interviews with heads of several institutions)

This was also exemplified in Ghana recently, which although not one of the countries specifically studied in the research also demonstrated a strong level of mutual engagement in protecting their domain by acting with support from the UOL in representing to local regulatory bodies which were trying to impose restrictions on allowing students who have read and graduated with an undergraduate laws degree from the UOL international Programme to qualify for local practice. Anecdotal evidence also showed that the heads of two institutions in Trinidad who enjoy high local standing in the legal and political community have also worked in concert to dispel doubts about the programme from uninformed members of the local education and legal regulatory bodies.

Disconnectedness is another possible defect. Wenger et al (2002:146) argue that when a community is too large, diffuse or dispersed to actively engage members, the sense of identification remains very superficial. "Many people sign up, but they don't return or honour their commitments. Individual members don't connect in personal ways that show enthusiasm, enjoyment, and a willingness to reciprocate. Disconnected communities treat interactions as simply transactions". The Former Director ULP (reinforced by other interviews) commented that many of the teaching staff in institutions are fairly transient. While most institutions retain a core of teachers who are usually involved in management of the institution and also have heavy responsibility for teaching duties, new teaching staff do not tend to last long. As stated previously, most institutions recruit their teaching staff from their own students graduating from the programme and while they successfully recruit enough to fill their staffing needs every recruitment cycle, the new employees tend to leave after a few years, many of them choosing to pursue in career in practice or in the corporate rather than quasi academic world. Such staff may not spend enough time in the community to truly be absorbed into its practice and may simply conduct the required transactions without actually understanding or becoming part of the culture.

The problem of disconnectedness also affects the CoP of independent third party institutions on an international level. It is quite easy to identify the hallmarks of a CoP amongst institutions which share the same national locality. However, it is harder to locate a community of practice among all institutions located through the various countries. Clearly, all institutions regardless of geographic location share the same domain, but it is much more difficult to discern a level of mutual engagement between institutions on an international level. This issue blends in with another defect termed by Wenger et al (2002: 146) as localism, where "a community lets geographical borders, departmental, or company boundaries define its own borders. It fails to transcend these

boundaries to develop the range, intensity, and diversity of connections that would maximise the synergy between people and groups”.

The level of engagement at international level is very low and thus, although it is possible to discern a common practice among institutions, the mutual development of that practice at an international level is also low. The exception being three institutions, one located in Malaysia, one Hong Kong and the other in Singapore, which have a very high level of mutual engagement and share resources and build a practice. However, this is due to the fact that although the institution in Singapore is incorporated independently and enjoys *prima facie* independent management, they are actually a sister organisation of the institution in Malaysia and they share staff, materials and management decisions and policies. Thus, it does not entirely count as two independent, unconnected institutions in mutual engagement. The Hong Kong institution – although a full State University - operates its law provision through lecturers from the Malaysian and Singapore institutions coming over to lecture/tutor on top of their work in their home locality.

This problem is mitigated to some extent by the efforts of the UOL in organising providers’ conferences with regularity since 2007. These conferences not only strengthen mutual engagement between the independent third party institutions and the UOL as stated previously, but also provide a space in which the third party institutions can strengthen mutual engagement amongst themselves. Observation data taken during attendance at a number of these conferences show that many institutions discover that they face similar problems, constraints and challenges and welcome the opportunity to seek a variety of viewpoints and solutions on issues regarding their operations. The conferences also give them a chance to network and build a database of contacts and hopefully form a starting point for greater future engagement. Anecdotal evidence gleaned from conversations with institution staff who have attended the conferences show that they felt a greater connection to the wider network of academics working under the same domain and as such more legitimacy to their enterprise. A number also stated a commitment towards further contact with colleagues overseas and a willingness to work in cooperation to organise international events such as mooted competitions amongst all the institutions teaching for the UOL ULP. In fact, a concerted attempt was spearheaded by the Head of an institution in Trinidad, however at the time of writing, no international project has been formally organised or has taken place between institutions on an international level.

4.6 Concluding Impressions

There are diverse and particular factors however, it is clear that on the subject of whether it is possible to identify a CoP between UOL and the independent third party institutions, the data has shown that largely it is possible to identify a shared domain and some level of mutual engagement but there is uncertainty over whether there exists a shared practice. Detailed study of practices in UOL and the institutions will be explored further in the chapter on teaching and learning and conclusions drawn then as to whether it can be concluded if a shared practice exists and if not, the reasons so.

On the issue of whether it is possible to identify a CoP amongst independent third party institutions, the data shown that at local level, the constituent elements of a shared

domain, community, mutual engagement and a shared practice can be identified. Further discussion on what the shared practice entails and how it impacts upon pedagogy within the programme will be discussed in the chapter on teaching and learning. At international level, while it is possible to identify existence of a shared domain and a shared practice, the level of mutual engagement is very low, while not entirely non-existent, may not be of a level to constitute a fully operational and effective CoP.

Chapter Five

Assessment

5.1 Assessment and Grading

The aim of this chapter is not to assess the quality of the assessment and grading process of the UOL International ULP but to identify mediating factors and perceptions of individuals involved.

It was apparent when considering identity and culture that the heritage of the programme is that of an examination process and examination board. Traditionally students reading law on the UOL ULP are assessed on the basis of a three hour long unseen written examination (to be undertaken without the aid of any reference material other than approved statutes) for each subject that they take in the course. This would work out to a total of twelve individual examinations throughout the course of study for a student who is embarking upon the traditional undergraduate route and nine for the senior status (Graduate entry route). The examinations are held over the course of a three week period from mid-May to mid-June with limited resits in October. For degree classification the examinations account for the whole of the students' grades and no account is taken of any work or activities undertaken by the student outside of the examinations. The final degree classification of the student is then based upon the performance in the latter eight of the twelve subjects taken or, in the case of the senior status across all nine subjects taken. In general, a student would need to obtain at least four grades of a class out of the latter eight subjects examined to be awarded a degree in the specific class or the best five for senior status.

The revalidation of the programme in 2008 saw a dual requirement for those students who wish a full Qualifying Law Degree for England and Wales. In addition to the degree they have to undertake a 'skills portfolio' which is assessed on a pass/fail basis; in 2013 over 800 students undertook this. There are 2 pathways and in pathway 1, a small number of students undertake a dissertation as part of the degree assessment/classification connected to the skills portfolio (42 in 2012-3) which is a 10,000 word essay (90% of the grade) and a two hour examination (10% of the grade). The examination covers questions of methodology and research and acts as a quality control in that the candidate has to explain the process of undertaking the research.

A full set of statistics regarding the amount of scripts marked in the may/June examination period for 2013 is in an appendix. Some 39,339 scripts (including the Laws Skills pathway and some 500+ candidates sitting law examinations in the EMFSS programme) were marked: allowing that each has to be double marked that was 78,678 markings. This is indeed an industrial process (Peters). The security and integrity of the examination process is the core concern of the External System/International Academy and all persons involved state it is essential to understand the factors that mediate between the administrative offices in London, academics that create examination papers, examination centres that provide the physical conditions for candidates to undertake the examinations, invigilating the actual examinations, the security of the scripts which are then collected and sent to London, distributed to examiners (all are double marked, which is 'open' double marking, i.e. the

2nd examiner marks with knowledge of the 1st markers marks and comments), the return of marks, the checking of scripts, the production of mark sheets for the Chairs of the Boards, the sending of samples to External Examiners and the conduct of the Board. Subsequently there is the process of administrative checking on request of worried candidates (no appeals on academic grounds are allowed), dealing with allegations of assessment irregularities (usually brought by invigilators finding unauthorised material in the examination room) As the Director of CPQ (Corporate Performance and Quality) division of the International Academy affirmed: “while we provide quality assurance services for the different areas of the International programmes it’s the examination process that is the great concern; if anything went wrong, there our reputation would be greatly damaged”.

This chapter reviews the conditions under which the assessment process is undertaken and factors that mediate the examinations in terms of enabling or hampering their functionality.

Examinations have always been at the centre of assessment in UK Law schools. Research conducted by Downes, Hopkins and Rees (1982) using thirty nine British traditional university law schools and twenty three British former polytechnic law schools indicated that fifty four out of the sixty three institutions researched employed the unseen, closed book written examination as at least one of their assessment methods. It was also the most popular method amongst those identified in the research. Students on the UOL ULP are allowed, since c. 2004 fifteen minutes reading time and earlier were allowed in specific subjects to take in approved statutes. Downes et al (1982) acknowledged a growing move from pure unseen closed book examination to allowing students to bring into the examination hall some limited and approved form of reference texts. Statutes in particular were not regarded as detracting from the primary values of the traditional unseen closed book written examination as they did not provide the student with any form of assistance in substantive understanding of the law or in application of it, but merely allowed the student to cite the relevant statutory legal provisions accurately while reducing “the excessive premium on sheer memory which often exists... (And is) inappropriate, given the rate at which statutes are introduced and amended, and their complexity of detail” (Royal Commission on Legal Services in Scotland, 1980).

The predominant mode of assessment within the six law schools making up the UOL consortium is unseen examinations. Given that the law schools internally can be taken to have greater flexibility and resources to experiment it is understandable that the external/international programme is totally examination based. In her 2004 pilot study of law schools undertaken for the UKCLE Clegg (2004) found: “the variety of methods used in the sample are disappointing, utilising a very small proportion of the techniques available... The standard assessment... is an examination and one or two written pieces of coursework. In some departments, modules are assessed by 100% examination (Clegg (2004:27). She chose as a representative quote the statement from a legal academic: “we just play safe!” (Clegg 2004: 32).

In slightly earlier work Brown (2001) identified a common set of problems which included:

- overload of students and staff;
- insufficient time for students to do assignments:

- insufficient time for staff to assess in an effective manner;
- 'bunching' of assignments;
- absence of well-defined criteria/marking schemes;
- inadequate, insufficient or improper feedback provided to students, particularly in time-constrained written unseen end of module examinations;
- variation in assessment demands of different modules ;
- the fact that assessment inhibits learning.

These may be a guide in exploring assessment and grading in the external ULP, but the research will also seek to ascertain if there is an identifiable philosophy behind assessment as used.

5.2 The Purpose(s) of Assessment

In 1974 Horgan provided some thoughts on the functions served by assessment which tended towards a pessimistic view of student behaviour and the study of the law. Starting from the assumption that humans are intrinsically lazy and are easily distracted by more pleasurable pursuits, formal assessments force students to do some amount of work knowing they will eventually be judged by their performance. The study of law was not a "self-stimulating or self-sustaining process. Sooner or later even the most perfect of students will become bored or lose interest and, accordingly will cease to work at his studies". Moreover, even if there existed students who are self-sustaining, focused and reflective in the purpose of their study, there is no effective screening method for a law school to identify and select these students. Thus, a scheme of formal assessment serves as a stick which provides the presumably unpleasant motivation of forcing students to do at least an amount of work required to demonstrate minimal competency (Horgan, 1974:80).

Horgan may be termed a pessimistic realist: formal assessment forces the student to work to reach at least minimal competency, however, there is no way assessment can guarantee that the student who has reached the required level of minimum competency has actually done work. The student could serendipitously achieve competency by "intuition, inspiration or mere luck". Guidance is required, thus another function of student assessment is to circumscribe the scope and content of the syllabus, structuring a focus for study. The abolition of any of the functions of formal assessment will not negate the ultimate purpose of formal assessment. If the student chooses to study material that will not be covered during the assessment, he will not be penalised, nor will the purposes of assessment be compromised as long as he can still demonstrate minimal competency. The ultimate purpose of formal assessment is to set a standard or range of standards for students to demonstrate their levels of competency: "The law school is not prepared to guarantee that students will attain the required minimum competency in law simply because they have the potential to do so and are presented with the opportunity of doing so. [Formal assessment] provide[s] the law school with a reliable basis upon which it can give this guarantee" (Horgan, 1974: 81).

Assessment may serve a variety of purposes. These include, judging students' mastery of essential skills and knowledge, measuring students' improvement over time, identifying difficulties faced by students, evaluating the effectiveness of the course

undertaken and also to serve as a form of motivation to students to study. The type of assessment method used by any institution will depend of what the institution has identified to be its specific purpose (UKCLE website 2011).

Assessment can be broadly defined into two types, formative and summative, or as termed by Tribe and Tribe (1986), in course assessment and end of course assessment. Formative or in course assessment is work assigned to the students during the course of the academic study period in order to obtain an estimate of the student's progress and abilities to date. Such assessment can help the tutors identify difficulties in learning and enable the tutors to give specific feedback based on the work the student has produced in order to guide the student on to further improvement. This type of assessment may take the form of a piece of assigned course work requiring students to solve a focused or an unfocused problem, an assessed tutorial presentation or even a multiple choice test, amongst other methods. In some universities, this type of assessment may even form part of the student's final marks at the end of the academic study period and contribute eventually to the classification of the final degree. Much traditional opinions were anecdotal, for example, Thoday (1957) prefigured Horgan's (1974) views in stating that students work longer hours in the periods of the term that they are facing submission of assessment work.

The main benefit of formative or in course assessment is its perceived ability to improve the teaching and learning process. Tribe and Tribe summarise that by "means of the feedback received the student can improve his study habits, his essay skills or his examination techniques. Further, intermittent assessments may help the lecturer to monitor students' progress; this in turn may lead him to adjust and improve his own teaching methods, the content of his course and his attitude towards students" (Tribe and Tribe, 1986:162).

Summative assessment is a piece of work set for the students at the end of the course or at the end of an academic study period during the course in order to measure the students' competence to date and a UKCLE (2011) material states that it "serves no other purpose than as a description of what has been achieved". This is traditionally in the form of an examination. This type of assessment is generally used to inform decisions regarding the students' future. The grades received following summative or end of course assessment are generally used to decide whether the student will progress on to further stages of the degree course, or the type and classification of the final qualification awarded. The results of summative assessment are the traditional indicator of the overall competence of the student and contribute towards consideration of whether the student would qualify to take professional qualifications or post graduate study and may even serve as a predictive indicator of the student future job performance (Tribe and Tribe, 1986). The end of academic year examinations set by the UOL ULP falls squarely in this category of assessment type; it does not incorporate any aspect of summative assessment throughout the course of study.

The UOL's International ULP, following Horgan (1974) would appear to give the ultimate purpose of formal assessment as providing a reliable basis upon which to guarantee that students who are awarded a final qualification have demonstrated a level of competency to a set standard. If indeed this is the driving philosophy behind the specific assessment method used by the programme is this by necessity, historical legacy or design?

Referring to the history of the UOL and the emergence of the external system, the original charter of 1836 which established the UOL (by incorporating University College London and King's College) provided that students will be permitted to sit for the examinations conducted by the University of London after proving that they have undergone to a satisfactory level a course of study at either institution, or "from such other institution, corporate or unincorporated, as now is, or hereafter shall be established for the purposes of education, whether in the Metropolis or elsewhere within Our United Kingdom" (University of London Charter, 1836). This early system required the student to have undergone a course of study at an institution which must be recognised by the UOL. Such institutions once recognised, would have the power to issue their students with certificates of endorsing the individual's attendance and good conduct, and the certificates would be the measure of which the student would be judged to be eligible to sit for the UOL examinations.

This early model seems to incorporate principles of both formative and summative assessment. While the ultimate test is one of summative assessment (i.e. the UOL examinations), there seemed to be a recognition of the need for formative assessment, thus the requirement for an institution to have responsibility to prepare the student adequately and form an assessment of the student's conduct before issuing a certificate of eligibility. How an individual student was assessed by his institution and the methods used to judge the eligibility of a student to enter into the examination was the province of the individual institution. However, Clause 36 of the Charter of 1858 set the model of assessment that was to form the bulwark of the external system by removing the requirement for a student to have attended at a recognised institution and the need for the student to present a certificate of eligibility issued by such institution. As long as the student met the requirements laid down by the University Senate as contained in the regulations, they were eligible to enter themselves for the examinations conducted by the University.

Clause 36 has been said to be the launching point for the UOL to be regarded internationally as an examining body, awarding degrees based on their assessment of student performance by examination. The UOL does not concern itself with the process by which an individual student gains his knowledge and skills or the methods used to prepare him for the examination, but requires the student to demonstrate what he has finally achieved after a given period. Thus, it would seem that the effect of Clause 36 indicates the UOL was not be concerned with the conduct or arrangement of formative assessment.

The push for the university to abolish the requirement of certificates of eligibility came in the form of a report by Henry Warburton and George Grote submitted to the Senate in 1857. The report included strong views from several members of the Committee of Graduates, amongst them Dr Robert Barnes, a strong proponent of the no certificate position (Jones and Letters, 2008). Chief of his reasons was the fact that the UOL was unable to discern or control the variety of methods used to assess the students throughout the wide ranging number of institutions. A key indicator of effective assessment is reliability. Thus, a certificate issued by an institution endorsing the student's fitness to sit for the examinations is only of value if the UOL was aware and accepted the methods and standards used by that institution to assess the student's formative progress. According to Barnes (quotation extracted from Jones and Letters, 2008:15): "College training at Oxford and Cambridge...where the university authorities

exercise an extensive control over the students both in and out of college, is an intelligible thing... But to attempt to import a similar system into the University of London, where all the conditions differ, presents insurmountable difficulties. The affiliated institutions... are scattered all over the country, their heterogeneous constitutions defy a central supervision, or the attempt to subject them to a uniform discipline”.

The report by Warburton and Grote also cited the views of other members of the Committee of Graduates who opposed the requirement of certificates on the grounds that they ran contrary to the very principle on which the UOL was founded, which was the promotion of education to all, without inequality or discrimination. An education which according to Dr John Bucknill, meant “an education of all the mental faculties, by means of a wide and liberal range of study, however pursued, or however obtained. Searching and profound examinations, like those of the UOL, cannot be undergone successfully unless by men who have assimilated knowledge, and whose intellects have become vigorous by years of discipline. They render the college test superfluous” (quote taken from Jones and Letters, 2008:16). Isaac Todhunter cited the point that the requirement of certificates unfairly oppressed the capable student who due to circumstances perhaps out of his control may be unable to attend a recognised institution.

Thus, after Clause 36, examinations conducted by the UOL were the sole basis for assessing a student and forming a decision to award a qualification. However, at that time there was a model (i.e. Oxford, Cambridge) whereby students attended a course of study but only sat examinations at the end of three years. This is pure summative assessment. However, UOL did not adopt this as with the abolition of the certificate requirements and consequently the need for undergoing a course of study, it accepted suggestions, from, amongst others, Dr Bucknill, that students be required to sit a series of examinations in the intervening period between qualifying to register for the examinations and achieving the final degree award, instead of being subject to a full, final single set of examinations. Following Jones and Letters (2008:17): “This principle of breaking down the degree into different stages is one which came into its own again in the late twentieth century, through, for example, credit accumulation and transfer and the modularisation of degree studies”. It is this image, of a consistent diet of examination sat at regular prescribed intervals that provide an accurate description of the ULP today.

Students are required to sit for examinations at the end of the academic study period at each level of their degree and until a change of regulations in 2010 had to pass all before they could progress to the next stage and passed by the whole diet – thus one bad failure (a mark below 30) resulted in failing the whole year (post 2010 students are credited with subjects as they obtain a mark of 40 or above). Undergraduate students sit for examinations in either three or four subjects, again depending on the route they have taken (Graduate entry sit either 4 in year 1 and then 5 as Route A, or 3,3,3 as route B). Their performance in each set of examinations will determine whether they qualify for the next stage in the degree, and the classification of the final award is determined by the performance in four out of the latter eight subjects taken (or all nine for Graduate Entry). As such, that since the students are not subject to a single assessment which determines the final outcome of their degree, the assessment cannot rightly be termed pure summative assessment. Instead, it would be more

accurate to term it a blend of formative and summative assessment. The examinations and the subsequent results obtained at each stage, while fulfilling the summative purpose of providing a basis to decide the student's future progression, also act as a form of feedback for the student and provide an estimate of his abilities and progress to date and also provide validation of his study techniques.

On a closer analysis however, it would be overly generous to grant the assessment technique of the UOL ULP the full benefits associated with formative assessment. It is true that a final grade accorded acts as a form of feedback, indicating to the student an idea of his level of performance and achievement. But it is a very rudimentary form of feedback. The UOL ULP does not provide students with individual feedback on their examinations, nor does it point out to each student areas where they may have improved in parts of their examination. The student is given a final grade for each of the subjects sat, but he does not know how that grade has been arrived at. Feedback is generic and provided by way of Chief Examiners Reports. Thus, while the assessment method used in the programme technically contains a blend of formative assessment elements, it definitely falls on the very extreme summative end of the formative/summative continuum.

5.3 Effectiveness of Assessment Method

Effective assessment is usually judged on three principles:

1. Reliability;
2. Validity;
3. Explicitness (see for example UKCLE website 2011).

Reliability is defined as the level of accuracy surrounding the processes associated with the assessment event. All such processes must be able to withstand external scrutiny and decisions taken must be justified if necessary. According to ULCLE, such processes run the gamut from the planning and setting of the assessment tasks, submission procedures, marking, and examination boards.

In the UOL ULP, the responsibility for setting the examination papers annually for each subject falls to the Chief Examiner (CE) and Deputy Chief Examiner (DCE) of the respective subject. Guidelines provided to the CE and DCE outline that both parties are to have input on the design of the examination paper. However, the guidelines do not set out the exact extent of input either of such examiners will have. Thus, the CE and DCEs of each subject are allowed an element of discretion when it comes to collaborating on the examination.

Administratively, the fee for setting an examination paper is divided between the CE and DCE unless the CE specifically states that He or She wholly set the paper and if so this is reported to the Chairs of the Board. In practice the large papers all are co-set but the smaller ones may be wholly set by the CE. The UOL Undergraduate Laws Programme robustly defends its assessment design and process:

“Examination papers are set by CEs and DCEs. Examination papers for the summer diet and the re-sits are submitted to the ULP Office by early March and are checked in one of three scrutiny meetings chaired by a Joint Chair of the Board of Examiners. The

papers are considered in groups according to expertise of the External Examiner in attendance. The meetings are also attended by the four Joint Chairs and Chief Examiners of the papers under scrutiny. The Chair of the scrutiny meeting is responsible for following up any matters raised by the scrutiny meeting with the respective Chief Examiner and signing off the paper for printing and distribution to global examination centres by the Examinations Distribution Office". (ULP, Self Evaluation Document, 2012:39-40)

As seen from the statistics there are two papers set in the large subjects (Zone A and Zone B), one paper is for the UK and those countries ahead of it in time and the other for those behind in time; papers may have some common questions but the aim is that they are sufficiently dissimilar that a student who took (against the rules) a paper from an examination could not somehow fax or email or SMS a copy to a student in a country in a later time zone. However, questions arise as to whether the two papers are always of equal standing. One respondent admitted that he always did one (Zone) paper and his co-examiner did the other and that there were differences in style. Another CE stated that they found it easier for them to do one complete paper and the DCE the other as when they had mixed questions there was often an imbalance. When further questioned they admitted that there was a slight difference in emphasis as between the CE and DCE and thus the different papers may have somewhat different 'flavour' but claimed that this was always within the allowance of the syllabus. However, over the course of the research it was a constant theme that tutors in the third party institutions were keen to 'follow' who was CE and sought to second guess the style of the paper: when there appeared to be a change in pass rates in that institution from year to year interviewees from UOL (in particular the former Director but also members of the ULC) acknowledged that it was common for individuals from that institution to ask (usually informally) if the CE had changed? Thus there was a general acceptance that the personality of the CE had a strong influence on particular papers. The following extract from interview with the first Director is illustrative.

"Q: What about the impact of students who utilise dictated notes or set examples given by institutions or private tutors?

A: Most questions are designed in a way that would not be able to be answered with that sort of rote approach. That won't stop them trying. It depends on the subject but if it is a case law subject, there would be an immediate difference between a candidate who can think which are the relevant cases and select them and the candidate who writes everything related or tangential to the topic. It took me a long time to realise it, but my colleague XXX who for a long time was responsible for Criminal Law, he wrote questions where many, many things happened. His reason for doing this was to get the candidates to respond to each event, even if it wasn't critical to the final advice, or needed to be dismissed because they were missing an element of the offence. So that made the papers quite hard. If you do a long narrative in contract, it doesn't have the same effect." (Former Director, Examiner in Laws of Contract)

As stated earlier observation and interview data certainly supports the claims that CEs and DCEs take their responsibilities seriously and in many cases are attempting to address perceived issues with student learning by adopting strategies of paper setting. However, while that is an understandable professional desire, reliability is measured by accuracy and repeatability. Changes to question style and emphasis from year to year put reliability into question. Take as an example: in a major subject that was solely

essay question based, a new CE – frustrated with a perceived large scale problem of ‘general answers that did not focus on what the questions intended’ but which he saw as partly at least due to the questions being too general - deliberately made the next year’s questions very specifically focussed (albeit that they actually closely fitted some of the exercises in the subject guide and therefore were ‘fair’). It was widely perceived that pass rates fell somewhat and several examiners complained that the level of the questions was closer to Masters Level than undergraduate. But in addressing accuracy and repeatability the ULP is dealing with an environment that is not a University, not a faculty but an extended domain that is heavily mediated by third party institutions and other factors that I have stressed more appropriately identified as an extended CoP. Repeatability denotes consistency of standard but while in an ‘internal’ situation there may not be much emphasis, if any, on past examination papers and CE reports, past examination papers are closely scrutinised by tutors in third party institutions who may teach to the (past) paper. A former Director related in interview what happened when as a CE he took over a compulsory 1st year module:

“A very important topic that is a popular examination question is the role of the Jury. When I took over I did not ask a question on the jury and instead for both Zones asked a question like ‘The Criminal Justice system is subject to a continual clash of values and interests; it is little wonder that miscarriages of justice occur’. Discuss. A significant number of answers from XXX, gave back the words of the question, perhaps did a slight discussion of IRA cases etc and then gave two pages on the Jury!! The best was a script that said: You did not put a question on the Jury! But there always is a question on the Jury and I prepared for it, here is my Jury answer!! And then gave an obviously pre-learnt three page general answer to ‘the jury question’!! “

But he also stated that: *“Of course I understand, actually we all understand, that it’s necessary, absolutely necessary, to have a large degree of consistency. The regulations state that any really major changes to the syllabus for example have to have two years notice. But another demand – that of feedback – itself reasonable on its own terms provides a complication. What institutions and students want in CEs reports are actually model answers. But if we provide those...ugh!! Then what we will get when a similar question comes up is the stuff we put in the model answer!!”* (Former Director, current examiner and former CE CLRI)

Now to consider accuracy and the crucial question that arises is: accurate to what? In the UOL ULP accuracy and repeatability are in principle gauged by linkage to the learning outcomes and learning materials now supplied by the subject guides and provided readings, but if the examiners have discretion in paper setting what guarantee is there that the paper reflects those learning objectives and materials? One approach would be to remove discretion and dictate strict rules for paper design linked to the objective and materials in order to ensure that all students sitting for the examination in the subject, regardless of the examination paper they end with are examined under the same conditions relating to the material and types of questions set and linkage to the learning outcomes. This is problematic. In the last few years “marking guidelines” have been introduced and there have been “discussions over the level of detail” (reported in various informal conversations), moreover there have been FOI requests for these to be made publically available; the UOL and ULP have resisted on the basis that these were not produced with publication in mind and were intended as semi-formal guidance “which was not intended to be extensive”.

A much repeated phrase or idea has been that “we” or “UOL” believe in “students thinking for them-selves”. Two interviewees (both CEs in their subjects) related that they had had experience teaching and examining for the Open University but were dissatisfied as they perceived that it “delivered the course in a box”, which on questioning meant that “the limits of the course was the limits of the [course] materials”, whereas “UOL expected students not to be bound in their thinking”. While desirable this position may face the reality of the industrial process that Peters defines as part of distance learning.

Accepting that CEs and DCEs have allowance to exercise discretion in paper setting and do produce papers that reflect their individual understandings across the programme, it is accepted that there will be differences between CEs but it is put forward that since they are setting papers in different subjects, this is simply a factor that gives the programme its individuality in the same way that any UK law School will have a variation in assessments and questions depending on the individuals and personalities involved. Strong views were expressed that not only would it be very difficult and artificial to posit absolute rules to ensure a uniform examination design across the board but that that would be against the very idea of what “London stood for”.

On a practical level of question types it was felt that different subjects fitted different styles. Some subjects are best examined by means of presenting a normative or summative statement and requiring a student to discuss or analyse or take a stand on it while other subjects are best examined by requiring student to tackle an unfocused problem using facts given in a scenario and giving advice on the legal issues arising. And yet again, it was right that some subjects utilise a combination of both (CLRI the subject of Common Law Reasoning & Institutions, has incorporated a small element of focused problem in the legal research component).

Reliability is a focus of the scrutiny process of the draft examination papers. The scrutiny panel meetings review all prospective examination papers. The purpose of the review is to ensure that all the examination papers are free from design errors. Such errors could include linguistic mistakes, spelling mistakes or even lack of clarity in expression. The aim of the scrutiny process is to ensure that each examination paper is able to clearly convey to the student the task they are expected to perform for the assessment. To paraphrase the views of the Chairs (running together formal and informal interviews/conversations): “The questions set in the tasks should be worded in a manner that allow the student to know clearly what is being asked and is given (if required) the suitable facts for him to answer the question to the best of his abilities. The scrutiny process also aims to ensure that the examination tasks are fair and practical to allow the students to demonstrate a reasonable level of achievement in the assessment time allocated to them.”

However, even with the additional process of scrutiny, it seems that it is impossible to ensure total immunity from design faults, or at least perceived design faults. Moreover, while in an internal programme there is shared information, there is an absence of understanding of the examination paper setting process by students and staff at third part institutions. Consider the following comment by a lecturer, which is necessarily paraphrased since it was transcribed off subsequent observation notes, rather than voice recorded (gained while conducting an introductory session at a third party institution in London as part of the researcher’s duties as a GTA):

"I really think London should review some of their exam papers set, because some of them are just unfair to expect the students to give it a real go in three hours. I have said this many times to representatives of London... Some of the questions are just too long, they are practically a story with so many facts, I mean just reading one such question alone and trying to understand it would take up all the fifteen minutes reading time allocated.

I mean, do you know what the vetting process is like, what are the criteria they use to pass a question? Because I just compare it to myself, I mean I have set exam papers before for [the law faculty of another London University] and such questions would never be passed by the vetting there. Company law this year, every year really, had practically four such questions. I teach Company so I know that for a fact, but some other tutors have made the same observation for the other subjects also". (Lecturer-Third Party Institution, London)

Another perceived design fault of the examination papers has also been identified as language ambiguity due to cultural differences in usage. The following anecdote reveals some rather amusing misunderstandings that have occurred:

"Sometimes I think London should be careful in the language they use in the exams because for these external exams, obviously not everyone is a native English speaker, and I mean native English speaker in the sense that they may have good command of English, but they are not English culturally and they may not be familiar with certain terms. I recall one year where the question set a scenario which had two walkers on a lonely fell, and that's a very technical term for walkers and ramblers and many students did not know what to make of it. And that year, when one question had someone driving above the speed limit over a sleeping policeman. [Laughs] I had students who told me after the exam that they discussed issues of Grievous bodily harm, attempted murder and all that because they thought it was literally a sleeping policeman. And in a Criminal Law paper, these could mean serious errors causing the answer to veer off in another direction altogether. Oh, and another one I recall because it caused a lot of discussion subsequently was one question where a lady had her wedding dress splashed with something and she had a severe fit. Some students took it to mean she simply got angry, and some actually thought she literally had a fit, like epileptic brought on by the incident and went on to discuss issues of harm." (Principal/ Lecturer- Third Party Institution, Singapore)

While papers are assigned to particular examinations scrutiny panels depending on the expertise of particular external examiners another constraining factor is time. CEs and DCEs are – by the nature of the programme – located elsewhere. Pressures of their college duties sometimes means that their papers are late; internally, this has a less effect but here where there are only a set number of scrutiny meetings late papers may mean that late papers get less attention.

The next crucial issue in measuring reliability is to consider the marking process. The examinations are sat by a number of candidates far exceeding the number who would sit in the law faculty of a university internally. Thus, for a single subject, especially the compulsory subjects, it is not unusual to have a number of examiners marking on it. Bonham and Boyd (2007:38) investigated reliability when different markers make the same judgements about a single piece of work; reliability would require that the candidates are marked on a criterion which is consistent and coherent on two levels.

First, the existence of certain subject specific criteria, those relating to the specific knowledge and material, which are consistent and agreed upon by the examiners of the particular subject; second, general criteria relating to the examination as a whole. This will demonstrate that the students despite having their examinations marked by different individuals are assessed on an objectively set criterion by which the markers would have to defend or justify the accorded grade if called upon to do so.

The general assessment criterion for the International ULP is published in Annexe E of the programme regulations handbook which is distributed to each student as part of their resources upon registration on the programme (see appendix). Copies of the regulations are also given to independent third party institutions. This criterion sets out the general expectations of the university with regards to an answer to a particular examination question. The criterion describes a set of factors for each grade class, ranging from first to fail. An answer would be awarded a mark within a class range if in the examiner's opinion it has satisfied the general criteria set out for that particular class.

On initial examination, the published criterion seems fairly detailed. The factors provided related to depth of knowledge, ability to argue and analyse a position, clarity of expression and grammar, range of sources cited, structure and presentation. Further specific criteria are provided in relation to problem questions which refer to identification of the relevant legal issues, ability to apply relevant legal principles, ability to argue an alternative or analogous position and ability to provide a summary of parties' legal position. The official general criterion however does not provide examiners for individual subjects with specific criterion relating to the subject they are marking. It is now the practice for CEs to provide guidelines, however currently such guidelines, differ in terms of detail and instruction although there are examples of good practice circulated and proposals for increasing standardisation. That such guidelines are needed is apparent from the following experience:

"I really had some difficulty the first year I was doing marking for the external. Back when I was in (previous position in a post 1982 university), the head for each subject was required to set down very detailed marking criteria and guidelines for all staff who were marking. There was a specific format used in fact, and it even specified which statutes or cases or articles absolutely had to be mentioned for a minimum pass, which issues need to be at least identified, then if the student mentioned anything beyond that which showed further reading or understanding, that would mean more marks up to a certain point and then of course, for reasoned analysis and critical thinking, that would take the answer to a second upper of first. I'm not saying there is absolutely no discretion, obviously, all marking involves discretion. We had discretion to decide, for example, if an examination paper had sufficiently convinced us that it deserved a first instead of a second upper, and of course, that involves some freedom on our part to use discretion as you know, the line can be very fine between the two.

But here in (UOL) external, I was totally shocked the first time round, I kept waiting to see if there were going to be some kind of official practice, but then I realised that I was just supposed to get on with it. (Examiner in Public Law and EU Law)

This experience (admittedly now perhaps different with marking guidelines) was countered by the former Director and other experienced examiners on the terms that such rigidity is not the London way. Examining was seen as a "matter of feel", or

“professional judgment which too many [set] examples and rules destroys”. However, related problem concerns second marking which some respondents admitted they had worries over: *“I have heard of cases of second examiners who have done virtually nothing except to say that they agreed with the first examiner.”*(First Director of the ULP, Former CE Law of Contract).

The researcher marks on a particular subject and on discussing this with the [then] deputy chief examiner of the subject, he commented that he found second marking scripts that had been first marked by the researcher a fairly easy task as the marks he arrived at were practically similar to the marks the researcher had awarded. However, he went on to confide that he had a difficult time second marking answers from another examiner on the subject as his marks awarded wildly differed, and there were several scripts where he “was forced to perform self- moderation and in some cases the discrepancy was so great that despite self-moderation, I had to send the scripts on to for third-marking”. When asked about this the former Director (and still Joint Chairman of the Board of Examiners) responded: *“Yes, it is one of my key concerns. Admin officers are asked to and do note instances where it seems that the 2nd marker has done very little and I get a list of this. If we get it before the Board sits then I go over it and get some of the scripts – certainly all where the marks seem out of line with what they got in other subjects - remarked by the CE (or External). If it’s after the Board then we check and see if there was any injustice done and again may get remarked and if so we adjust, if it’s a major change of course we have to do that with an external examiner, the important thing is accountability...”*

The programme has particular “customs” in place to deal with some differences between examiners (distribution letters to examiners, personal conversations, observations). Partington (2004) states that differences of sometimes up to 10 out of 25 is not uncommon in essay marking; this would be considered exceptional on the ULP and dealt with by 3rd marking by CE or other experienced examiner (DCE or if s/he was one of the markers or an External). Bloxham and Boyd (2007) suggest that the cumulative effect of such differences may mean that the student’s final degree award classification may owe as much to having being assigned a fortuitous set of markers as to the level of their academic preparation and competence! In response the “customs”, in particular the averaging of the marks between examiners of a particular script, the spread of examiners, the review of marks as they are presented to Chairs on the mark sheets, alleviate this concern.

What of the roles of first and second examiners? Over the course of research some examiners expressed uncertainty over the specific role of the second examiner or second marker in common parlance. The uncertainty lies in the question of whether the second marker is entirely independent and looks at the script with fresh eyes and awards it a mark in accordance with the criteria given to him and/ or his sense of professional judgement, or is the second marker assessing the script in light of the mark awarded by the first? In the latter scenario, the role of the second marker is then to accord with or calibrate the mark of the first marker in light of how accurately he (the second marker) thinks the first marker has interpreted the marking criteria and/or his exercise of professional judgement. Differences among examiners in recognising the proper roles of the first and second examiners may result in inconsistencies in marking, again detrimental to the issue of reliability.

This is tempered to a certain extent by the processes put in place by the UOL Undergraduate Laws Programme. As stated in its Self Evaluation Document (2012:42) “All examination scripts for the Diploma in Law and LLB are anonymous (bearing only a candidate number which changes at each examination diet) and double-marked...Double marking is not ‘blind’, however in the event of disparity of marks, normal procedure is for first and second marking to be averaged numerically, and in cases of a serious difference second markers are to consult the CE in their course for moderation. Independently of this, significant discrepancies between first and second marking are identified by the Student Assessment Office and one of the Chairs of the Board and referred to the Chief Examiner in the course and/or an appropriate External Examiner.” After stating some more of the practice the SED stated: “The examinations processes and procedures are robust and efficient”.

Despite the best efforts of any educational establishment to implement robust procedures to ensure reliability and consistency in assessment, Knight (2006) argues that challenges to reliability are inevitable in assessing work in higher education due to the fact that the nature of higher education assessment is to judge the end products of complex learning, which beyond mere knowledge also include capabilities such as initiative, adaptability and critical thinking. Such qualities cannot simply be measured by finite and determinate criterion which is the greatest indicator of reliability. Knight (2006) further “contends that non-determinate subjects that deal with the human world such as arts, humanities and social sciences rely more on the subjective judgement of assessors” (discussed in Bloxham and Boyd, 2007:85). As such, rather than regard the lack of formal, subject specific, detailed guidelines as a detriment to reliability, it is better viewed as a problem inherent in the assessment of legal education at the undergraduate level and that reliability can be fairly presumed if the examiners are regarded as connoisseurs, a concept advocated by Eisner (1985). Following Ecclestone (2001), like connoisseurs whose opinions are accepted as sound based on the trust and confidence placed in their years of training and experience, academics should be considered and trusted to be “able to make expert and reliable judgements because of their education and socialisation into the standards of the discipline and of their local context” (Bloxham and Boyd, 2007:39).

When asked whether it was elusive to speak of a single standard by which external students on the programme are assessed, one academic with 40 years of experience in assessing on the programme replied:

“I used to say that the examiners would have in their minds about what they expect from their own full time students. They would have an idea about the kind of work that the full time students would produce and they would consider if it would be of that same standard and the degree classification implied the same standards. To get a first as an external student meant that the examiner would think that if presented by an internal student it would also be first class. But it is elusive and at some points also subjective. I used to consider if we could, or can we do more remove the element of subjectivity and I came to the conclusion that we can’t really, you’ve got to live with it...There is bound to be some variation between examiners. You would never get total agreement and I think you have to live with that, and I think it is really not in the nature to start moderating individual batches of marks because we consider a single batch too harshly or too loosely marked, it would be too time consuming”. (Former Director, Former CE in Law of Contract)

Another former veteran examiner expressed very candid disdain on the notion that it can be deemed possible to require examiners in law, a subject requiring students to demonstrate critical analysis, to abide by an objective standardised criteria, or analytic grading as recommended by Gosling and Moon (2002) where a list of set objectives are given individualised relative weighting and the markers match the criteria against the assessment product and individual weights are given for each component and the final mark represents a total of the “weight” collected throughout. Critical analysis in subjects such as law would vary and its merits depend very much on subjective context and expression, as such, the demand that marking could be reduced to the results justified by reference to vague standardised criteria is offensive to the meta-objective of education, which is that of encouraging intellectual rigor through flexible discourse and challenge. His views accord with those of Biggs (2003) who argues that holistic marking, where the assessment product is judged in its entirety in terms of overall presentation and impact, represents a more realistic method of assessment. Following Biggs (2003) slight defects or limitations in one aspect of the product may be discounted if the overall is of sufficiently high performance or quality.

“It’s a bit the same with all universities now. What you have to do defies belief really. They tell you how you should teach and they tell you how you should examine and so on. It’s as though they’re trying to take over your particular expertise from you. [Which is] Just rubbish, just nonsense. Close down the whole of the Institute of Education, get rid of all those [sorts of organisations] - close down every education department in every university in the country. It would save so much money. At school there is so much oversight that teachers are functionaries. Even at XXX [UOL College], we are not free from these little petty beauracracies in the guise of education. If I have to mark an essay here I’m supposed to fill in a sheet. I don’t do it all the time but I’m old and I can get away with it. The young lecturers have to abide by all these rules and requirements. And the requirements are utter rubbish and do not make any sense towards building education that I can see anyway. I’ve got to put the student’s name on the sheet. Well, the essay’s already got the student’s name on it. I then have to write in the title of the essay - it’s on the essay. I then have to fill in so many marks for originality, so many marks for clear clarity of expression, so many marks for analysis, so many marks for content, so many marks for structure and all this kind of thing. It’s just ridiculous.”

Q: “Do you mean to say that marking is a discretionary art that just can’t be broken down into boxes?”

A: *“Of course, it can’t be. It totally objectifies..., it’s the objectification of knowledge under the guise of science. People think that the only form of knowledge left to us is science and that the whole business of interpretation, evaluation has gone. They can’t. It hasn’t. They try to do something that’s impossible to do, it’s not possible. Examining requires skill and judgement, everybody tells you this and you learn it. I don’t how you learn it, but certainly you can’t be taught it and certainly you can’t be taught it by people who aren’t of any particular ability or skill themselves, like educationalists. Why would anybody ever become an educationalist?”* (Former CE in Jurisprudence and Evidence, Former acting CE in Criminal Law)

As such, the safeguard to ensuring reliability does not come into play by making attempts to micro manage how individual examiners mark the examinations, but by ensuring robust standards and practices when selecting and appointing markers so

that full confidence can be placed in their exercise of judgement and discretion. However, statements like the one made above seem to represent a *prima facie* challenge to the notion that explicitness or transparency (Bloxham and Boyd, 2007) is a core factor in determining the effectiveness of assessment. The retention of marker discretion, although defended as being academically necessary, introduces an element of opaqueness in the process of communicating to the students the clear standards by which they will be assessed. Boxham and Boyd (2007:43) agree that achieving transparency in relation to complex, value based assessment is “an enormous challenge” and Orr (2005) recognises that despite explicitly stated criteria, markers develop and retain personal ideas, beliefs and preferences which guide their assessment standards and these may sometimes be in conflict with the explicit criteria communicated to the students.

The next element in determining the effectiveness of the assessment method is validity. Bloxham and Boyd (2007) choose to define validity using the concept of intrinsic validity discussed by Brown et al (1997) which states that validity is achieved when the assessment tasks are designed to test and are able to assess the stated learning outcomes of the particular subject. This definition is linked to the concept of constructive alignment as defined by Biggs (1996). Constructive alignment is a pedagogical methodology which emphasises the importance of having well drafted learning outcomes. It is the outcomes that will drive the course and determine the teaching methods, materials used and ultimately the assessment. Effective assessment demonstrating validity would require that the assessment method be able to discern whether the student being assessed has successfully achieved the desired outcomes and to what extent.

Following Bloom’s (1956) taxonomy, learning objectives can be classed in a pyramid of six sections. Knowledge forms the base section, followed by comprehension, then application, then, analysis, then synthesis, and finally with evaluation forming the apex of the pyramid. Using this system of classification, it is shown that mere recall and demonstration of knowledge is the lowest, and consequently, most readily achievable objective is student assessment. Tasks which are set to validly allow students to demonstrate knowledge accumulation would use terms and require activities such as, define, describe, locate, identify, state and name. The next level of the pyramid seeks to assess the level of comprehension the students have made of the accumulated knowledge and assessment tasks to validly achieve this objective would use terms such as explain, distinguish, summarise, interpret or illustrate with examples. The middle level objective of application seeks to assess whether the student having understood the accumulated knowledge is able to effectively apply it in an assigned task. This objective can be achieved by setting assessment tasks using terms such as apply, solve, produce, draft, show or organise. Moving into the higher level of the objective pyramid, the fourth level refers to analysis where assessment tasks to judge students’ learning may require them to differentiate, infer, compare or select between several different pieces of accumulated knowledge. In the fifth level, synthesis, students are then assessed on the ability to exert ownership over the accumulated knowledge by way of tasks requiring them to create, produce, hypothesise, develop or combine different pieces of knowledge or information acquired in the earlier stages. The final objective is that of evaluation which involves a reflective process, the objective here is to assess students on their ability to judge themselves on what they

have done and be able to summarise, critique, appraise, or judge a task or piece of work that they have produced and the processes they have used in that production.

Anderson and Krathwohl (2001) adopted an approach to learning objectives based on Bloom's Taxonomy which spans two dimensions, namely, knowledge and cognitive process. Anderson and Krathwohl (2001) posit that knowledge can be separated into four dimensions from the lowest order to the highest: factual, conceptual, procedural and metacognitive. The cognitive process dimension involves six elements: remembering, understanding, applying, analysing, evaluating and finally creation. While the six elements in the cognitive process dimension are somewhat similar to Bloom's Taxonomy, Anderson and Krathwohl's (2001) approach regards knowledge as the learning outcome or objective instead of one of the objectives. This approach then goes on to recognise that there are differing levels of knowledge and that different tasks are required to properly assess them. Thus, the elements in the cognitive process dimension can be used to help assessors identify the appropriate verb in constructing assessment tasks for the students (Bloxham and Boyd, 2007).

This has traditionally been an issue of much vexation in the UOL ULP. As an examining body, the UOL's initial learning outcomes in the early conceptions of the external programme can be traced back to the words of John Buckhill (previously quoted) that the examinations must be able to allow students to demonstrate an education of all the mental faculties resulting in a vigorous intellect and the assimilation and not mere accumulation of knowledge. Today this might be viewed as a noble philosophical outcome, but pedagogically of limited practical use in guiding student learning and assessment design. Terms such as vigorous intellect and assimilation of knowledge carry meaning in the abstract but are incapable of precise definition and measurement. Without a system of measurement, assessment becomes difficult and runs the danger of being arbitrary.

Unfortunately, this was the situation faced by students and assessors throughout much of the history of the UOL ULP. In previous research, it had been determined that external students had been preparing for their examinations in a resource poor environment (Thanapal, 2007). Upon registration, students were provided with a set of regulations containing the syllabus and a short study guide for each subject in which they were taking an examination in that year. Additionally, in the spring prior to the examination, they were provided with a supplement highlighting recent developments in the law. The traditional style study guides provided little in the form of guidance. Some amounted to nothing more than a reading list of recommended textbooks and landmark cases. The student was left to his own devices to source the necessary materials and to consequently make sense of the information. This was in fact an improvement to the days when students were simply left with a syllabus to prepare for the examinations.

Under these conditions, students are able to arm themselves with a wealth of primary material, but are left in the dark about the effective ways in which to make sense of the material. They had little idea about what they are supposed to achieve or understand after reading a particular chapter or how, if necessary to relate that chapter or case to another or to differentiate between them or draw out points of criticisms in a particular legal position. When faced with such difficulties, the natural inclination for the beginner learner is to start from the basics and attempt to make sense of basic definitions and concepts in order to accumulate knowledge about the subject. The lack

of clear outcomes about the results of learning inevitably lead the student to attempt to accumulate knowledge about the subject while being left in the dark about how to effectively utilise the knowledge. This is not necessarily a detriment to validity if the intentions of the assessment design are to test the amount of accurate knowledge learnt. The examination is judged as being effective if the types of questions and tasks set are designed to allow the student to demonstrate how much they have learnt about it in terms of providing information.

Some questions taken from archives in the 1869 examinations in the subject of Law of the Courts of Common Law display such intentions. Using these examples:

“Give the form of the general issue in an action for debt, in Assumpsit, and for trespass. Explain briefly the effect of each.”

“In whom is the soil of a river vested?”

Looking at these questions, it is seen that the objectives being assessed are fairly low. Following Bloom’s (1956) Taxonomy, it seems that only the first two levels of the objective pyramids were being sought, requiring the student to recite information and explain it. Using Anderson and Krathwohl’s (2001) later classifications, it seems that only factual and possibly conceptual knowledge was being tested. Similar examinations held in other subjects in the UOL that same period showed that these types of learning objectives were fairly common. In the examination for Zoology and Animal Physiology: Describe the structure of a bird’s egg, and the principal stages of the process of development in it which occur during the first four days of incubation. Also, in the examination for Botany and Vegetable Physiology: Of what is the Torus a modification? Mention some of its most striking forms.

At this point, it is safe to say that if the early structure of the UOL external provision lent itself to providing the circumstances where students felt enabled to accumulate vast amounts of knowledge as a form of learning, then the assessment tasks set in the examinations were certainly aligned towards that form of learning since all they required was for the student to show that they were able to produce factually accurate knowledge and perhaps in some instances to demonstrate incidences of comprehension. However, a look at the assessment tasks set in the examinations of the 21st century show that learning objectives of the UOL have changed dramatically.

In the 2010 UOL ULP examinations for three of the core subjects in the intermediate year:

“The regulation of constitutional boundaries, the regulation of election expenditure and the voting system at general elections make the achievement of principle of one person, one vote, one value impossible.” Discuss.

“The judiciary is a core institution in a liberal democracy governed by the rule of law. A representative judiciary reflects the idea that all should be able to participate in the small and large decisions that shape the society in which we live. It cannot be acceptable to exclude, or appear to exclude, well qualified candidates. Discuss, and assess the extent to which the current selection process in England and Wales achieves a representative judiciary.”

“David, who bears a striking resemblance to a famous footballer, Shane Mooney, meets Jane, a student, at a party. Jane, who has always fancied Shane Mooney, walks up to him and begins to chat. David realises Jane has mistaken him for the footballer but does not inform her of her mistake. They go back to Jane’s hall of residence where she agrees to have sexual intercourse with him.

Afterwards, David goes to the bathroom where he encounters Penny who has just stepped out of the shower. He asks her if she fancies having sex with him. She tells him she thinks he is a menace to women and she would never let him touch her. David is incensed and shouts at her, ‘I’m going to teach you a lesson.’ He then picks up a bar of soap and forcibly penetrates her with it. Penny does not resist as he seems so angry that she fears she might provoke him further. Advise David as to his possible criminal liability.”

The first two questions require the students to demonstrate, on Bloom’s (1956) Taxonomy at least the levels of knowledge, comprehension, analysis and some level of evaluation. The third question requires students to be able to, in Bloom’s (1956) Taxonomy display knowledge, comprehension, application and some level of analysis, while in Anderson and Krathwohl’s (2001) approach to be able to show factual, conceptual and procedural knowledge.

The UOL’s commitment to enhancing validity in assessment can also be evidence in their recognition that traditional essay and problem questions in themselves may not always be fully sufficient in ensuring validity in assessing the variety of knowledge and skills students are expected to have amassed and display. Following the SED (2012:38): “Depending upon the course, questions normally involve a balance of essay questions and problem questions along traditional lines for law examinations. However, within this summative assessment process, we intend to integrate, where appropriate, alternative approaches to the design of the final examinations (e.g. through the incorporation of case studies or multiple choice questions). We are aware that many other law schools use a variety of summative assessment mechanisms and, contingent on our ability to assure the security of the process, we will develop alternative assessment methods consistent with best practice”.

This is certainly backed up in the data where examiners have related their expectations in designing assessment tasks in the examinations.

“I think my expectations are that they engage with the subject guide, that they have obviously engaged with the case law and engaged with the material that we have provided and I obviously expect them to have consulted with the textbook. There is probably an expectation that they are able to apply the materials not just what we have given but stuff that they look at on their own, online material for example. This is usually communicated via the recent developments.” (Examiner in Public Law, Criminal Law and Family Law)

“In terms of the essay questions, we are trying to get students to show analytical skills and understanding of the law. To give them a chance to show understanding of tensions and arguments in the area. For problem questions, we want to see the application of the law to the situation and how the student is able to use examples of actual cases” (DCE in Evidence, Examiner in CLRI)

"I'm not sure the students entirely understand what they are expected to do with the compulsory legal research question in CLRI. Every year, since we started including it on the paper and students have to do it, I get the feeling most of them don't understand the purpose and what we are trying to get them to achieve. They give this sort of standard type answer about wishing they have more time to do their research, what we actually want is to see are issues of considered reflection on their research process. That they understand a variety of research methods and they have gone and applied them and realised the advantages or limits of each one. I am seriously considering removing this research question and replacing it with a different type of thing, like a reading comprehension exercise with a judgement or a statute, something like that. I think it would be a better test of their legal research skills, it would force them to read primary sources like judgements before the exam to prepare". (CE in CLRI, Examiner in Jurisprudence)

Thus, while it is clear that examiners share the sentiment that outcomes to be assessed go deeper than mere recollection of factual knowledge, and the recent questions reflected by the recent examination papers of the past decade bear out the fact that assessment tasks set have been designed to elicit such outcomes, a real challenge to validity is presented if the third element of judging the effectiveness of assessment, explicitness, is compromised. Assessment tasks in the examinations may be designed accurately to reflect the expectations of the examiners with regards to learning outcomes and objectives, but these expected outcomes and objectives must be clearly communicated to the students, as well as the criteria used to judge and assess the expected outcomes and objectives.

Using Biggs' (1999) theory of constructive alignment, students are not only guided in their learning by the stated learning outcomes, they are also guided by the assessment method of which the objectives is to test the level of achievement of the desired outcomes. If students have explicit understanding of the type of assessment tasks which they will be expected to perform, explicit understanding of the standards of achievement expected by the assessors and explicit understanding of the criteria used to assess those standards of achievement, they can they align their learning strategies and activities accordingly. However, research has shown that students often do not have an explicit understanding of what assessment tasks are about and what is expected of them (Bloxham and Boyd, 2007).

Following Bloxham and Boyd (2007), it is suggested that one reason students fail to grasp the meaning of assessment tasks and the standards expected is because they have not been properly inducted and integrated into the communities of practice (Lave and Wenger, 1991) of the assessing community. Lave and Wenger's (1991) identification of a community of practice recognises the essential constituent element of a shared repertoire, which is the "routines, words, tools, ways of doing things, stories, gestures, symbols, genres, actions or concepts that the community has adapted in the course of its existence" (Wenger, 1998:83). Not only do students have to contend with identifying and integrating the shared repertoire of their academic discipline, they also have to identify and integrate with the shared repertoire of the assessors in order to have explicit understanding of the language used in the consequent assessment tasks they are expected to perform and of any standards and criteria expressed by the assessors. Woolf (2004) states that the language of assessment standards and criteria can only be understood in context. Bloxham and Boyd (2007:67) identify that

assessment criteria “often include words such as ‘appropriate’, ‘systematic’ or ‘sound’ which are relatively meaningless unless (there is) a framework in which to understand them. (One) can try to write criteria and standards more explicitly, but there will always be a degree of professional judgement which comes from being a connoisseur in the discipline”. Knight and Yorke (2003:23) recognise that “even the most carefully drafted criteria have to be translated into concrete and situation specific terms”. This problem is perhaps intensified due to the subject matter and unique nature of the UOL ULP.

Firstly, law is a discipline which puts a particular emphasis on the nuances of language and the common law style of the English Legal System relies heavily on the rhetoric of argument and judicial reasoning. Students entering the programme as undergraduates have to fully immerse themselves into the community of practice of common law legal professionals and academics in order to make sense and exercise ownership over the material they are studying. The nature of the ULP means that the student body consists of people from very diverse backgrounds with differing standards of prior education and language skills. Such students face difficulty in adjusting to understanding and subsequently using the language of the common law. The level of difficulty for each student varies depending on factors such as maturity, work experience, educational levels and English language competency.

“Well I was under... the biggest impression of students is that... and I’ve got to be very careful about how I phrase this. The challenge you face with the student... teaching the students that I teach, I’ve met and seen in the Far East and Trinidad – maybe worse in Trinidad – would be the same challenge I would face if I was teaching students at a particular socioeconomic level in say Tower Hamlets. What I mean by that is it is not part of their daily bread, and they don’t go to schools where it’s part of their daily bread, to be articulate in the English Language. I’m not saying they can’t get their point across, you know, they can be very funny and very gestural, right; but the law requires you to articulate things in coherent paragraphs, right. So... and by this I don’t mean they don’t have English language skills, but the English language skills they don’t have are the same ones that certain English students don’t have, which is very hard to get them to understand that, ok, I want you to state this particular rule of law in a sentence. Right, you know, imagine you’re telling a judge, right. So they have a very hard time of getting in the frame of mind, and understand the challenge of actually having to be articulate using language alone, not reference, or gesture, or anything else, right.

So it’s... they lack the correct level of language that they need to do well in a law degree, which is why they like to memorise so much... I don’t mean to pick on these students because it’s partly a problem with the modern world, right; you know, television presenters these days if you watch them...they’d be faced with the same difficulty. In the sense that the law... the law is about, you know, it’s like philosophy in the sense that it’s about persuasion and argument and so on, and short, snappy sentences that you might read in advertising copy are not going to get you there, right. So I think that my impression of the students is that they... mostly the ones I’ve come across... suffer from their deficit in... not necessarily in intellect but in a certain way of communicating. ” (CE in Jurisprudence, DCE in Law of Trusts)

Secondly, and perhaps more importantly in context of effective assessment, the students on the ULP have to also immerse themselves in the community of practice of the UOL academic community. It is the academics from UOL that are responsible for setting the syllabus of each subject, designating the appropriate reading material and

setting the assessment tasks in the examination. They are also responsible for assessing student performance by way of marking the examinations. Without explicit understanding of the academics' assessment expectations and criteria, the students will not be able to adequately prepare for the examinations and this will challenge the effectiveness of the assessment process. It is vital that all students have a clear, coherent and consistent understanding of the terms used when the academics of UOL express their expectations of assessment, the terms used when the academics draft the assessments tasks, and the terms used when the academics set their assessment criteria. In a traditional university setting where students attend a course of instruction at the university prior to assessment, this problem is alleviated slightly by the fact that the subject in the course for which they are to be assessed would be taught, usually at least in part, by the academic who will be responsible for designing the assessment tasks and for setting the assessment criteria. Such students have the benefit of direct communication with their assessors and are thus, included in the community of practice.

Direct communication and indeed access to the community of practice is a crucial benefit to any novice learner. It is true that belonging to a community of practice is certainly not contingent on sharing physical space or proximity; however, learning within a community of practice happens through a process of participation in which all members of the community, novice or expert, engage in shared enterprise. Following Maynard (2001), the learner initially participates peripherally in the community but gradually increases in engagement and complexity of tasks towards full participation and as such both absorbs and is absorbed in the culture of practice generated by the community. With greater involvement in the community, the learner receives and is provided with different forms of information, not only about how to proceed, but also about meanings, norms, and ways of knowing that are specific to that community of practice. The external student reading for the ULP does not undergo a course of instruction provided by the university and has no access to direct communication with the academics who set and mark the examinations, thus although they are members of the community of practice, they face an additional challenge in identifying and integrating themselves with the shared repertoire of the assessors.

Data obtained from interviews with UOL examiners show that they are aware and understand this challenge faced by students studying externally.

"If you are an internal student, your lecturer would have certain compulsory areas to cover, and your lecturer would give importance to some things...and not so much to others. And you would know from that what is going to come out in the exam. In fact, when I used to teach at (XY) university, students would sometimes come and ask me why haven't we covered oh, say conspiracy for example, and you would just say, you know, oh well, it's not necessary or important for the exam and they would know what you meant. You get to know your lecturer and what is expected... whereas on this programme, the syllabus seemed to cover as much as it possibly could." (Examiner in Criminal Law)

"It is understandable because if you think of these people and I am trying to envisage myself sitting for an exam of Malaysian law, I would be a bit seized to know their expectations." (Joint Chair of the Board of Examiners, Examiner in Law of Torts)

"I think it came as a bit of surprise to the head of department at King's... the students once complained that I had missed three tutorials in a row. I had been away for a hernia operation and when I came back I realised that I had reached a topic where the lecturer just did not cover and I said that I saw no point in having a tutorial in a subject that the students just did not cover on a topic that they knew was not going to be on the examination. Internal students may have the slight luxury of being told by their lecturer that some area just will not be examined". (First Director, Former Chair of Board, Former CE in Law of Contract)

"I am not sure if the teachers (in the independent third party institutions) are aware of UOL's assessment guideline, or if the students are aware of UOL's assessment guideline. It depends on what material they read really. I know there is some level of non-coordination of messages, for example, there's conflicting information on the main website and the VLE. Oh, off the top of my mind, I can't really point it out to you now, but I do remember I was going over something one day and I said ...hang on...this doesn't really read correctly or make sense with what I read the other day. So there's some level of confusion, or maybe it's just me (laughs)" (DCE in Evidence, Examiner in CLRI)

5.4 Managing and Negotiating Expectations

Research data also shows that this difficulty is recognised by teaching faculty of the independent third party institutions, who are faced with the task of instructing the students and assisting them in preparing for the examinations and by the students themselves.

"The only way to be clear about expectations is to have actual interaction with the examiners and we don't. At least if we were given real life scripts with the marks given, from there we can gauge the examiners' expectations." (Principal/Lecturer-third party institution, Singapore)

"It's quite hard to say really... I mean we do encourage students to try out questions on their own as assigned work, perhaps under exam conditions, and we are always happy to mark them and give feedback and comments, but are my comments or expectations going to be the same as London's? That's the big question, isn't it? There's always this fear that maybe you might mislead the student and I think I tend to come over harsher in my expectations because of that, which is not good either. I know there's the examiners reports and I go over them with a fine tooth comb, but some reports are not very useful, or too short. Often you do see the examiner saying stuff like students this year failed mainly to discuss or identify this issue, or misunderstood this point, or made such error, which is useful, but what I actually want to know is what goes through the examiner's mind when they are marking... Right, like if this point or this case is not mentioned then it would be serious error or if this fact is identified, then more credit is given. Something like that. I don't know if it is possible to have a detailed marking guide, like you know, if you say X, that's Y number of marks...Is that too difficult? I mean, law is not like math is it, where you can assign marks for each workings or formula, so yes, it might be a bit strange". (Principal/Lecturer- third party institution, Trinidad and Tobago. Interview quote extracted from contemporaneous notes taken during informal conversation)

Even where staff at the third party institutions purport to be familiar with the expectations of the UOL, it is obvious that the language they use highlight the fact that they are aware of the assessment criteria in the abstract sense but are unable to explain how such criteria will be applied in practical assessment, thus confirming the findings of Bloxham and Boyd (2007) that the language of assessment criteria is not helpful unless situated within a practical framework to aid understanding.

“They want a thorough understanding and application. Knowledge is only part of it - they want students to be able to apply that knowledge. And they want the students to go anywhere and be able to make them proud”. (Principal/Lecturer- third party institution, Bangladesh)

“I think London expects them to do very well instead of just meandering through. I think London expects a depth of critical thinking, so students need to come in and do law for the right reasons. Law seems to be a status symbol here; they do not do it to be a lawyer but instead just touch the surface and get a pass. But I do not think that is what London expects, they expect that these students are going to come out as the cream of the nation’s intellect. There should be that stimulation and excitement when they do the degree, instead of just taking the happiness on the look of others faces. I think that is what London expects”. (Principal/Lecturer- third party institution, Jamaica)

“Well, really, based on my experience, I have a fair understanding that UOL has very high expectations in terms of students’ performance”. (Director of Studies/Lecturer- third party institution, Malaysia)

Terms like critical thinking, application and high expectations are fine in the abstract as they convey a general sense of awareness for the student but as a real guide to student preparation, how can those terms be applied in the context of actually performing an assessment task? When the student is told that UOL has high expectations, how does that actually translate in assisting the student to have explicit understanding of the criteria for a second upper mark or first class mark?

Academics at UOL point to several sources which help students to increase awareness of the assessors’ expectations in the types of assessment tasks set and the criteria used to assess student performance. The primary source identified as being crucial in communicating expectations to students are the specific study materials designed by the UOL to be used by students on the course. In addition to providing access to primary material such as textbooks and online research databases, the UOL has developed general study material and subject specific material. Upon registration, students are provided with a general guide on study skills and examination techniques, they are also provided with a subject guide for each subject that they are registered in for that academic year. The subject guide breaks down the syllabus of that particular subject, directs the student on primary and further reading, raises issues of interest and controversy in certain areas of the law relating to the subject and also provides a short summary of each topic in the subject syllabus. The study guide is not envisioned to replace the textbook as primary source material but instead is intended to guide student learning in using the primary sources effectively in preparing for assessment. In keeping with the context of Biggs’ (1996) theory of constructive alignment, each chapter of any study guide starts off with stating the learning aims and objectives for that chapter, and ends with a series of activities which students are supposed to attempt as part of their learning process which are matched with and designed to test

the achievement of the pre stated learning aims and objectives. The purpose of such design is to communicate to the students what the assessors expect the students to have achieved at the end of each chapter and by attempting the activities, the students are given guidance on the type of tasks they may face when being assessed on the subject.

The following data extracted from a series of interviews with the Former Director (and former CE in CLRI, and Examiner in Jurisprudence and Criminology) support the claim that every effort is made in ensuring that students are given explicit awareness of the assessment tasks expected of them

“Another thing that is stressed in distance learning is that your materials are to be set out in terms of learning aims and objectives and then you are meant to create a continuum. The continuum goes from the design of the learning materials, but how do you design the learning materials? You design the learning materials in terms of each chapter or the overall learning materials having a set of aims and objectives which you want the students to have achieved at the end of those materials and activities. You then try and make your assessment, your exams, fit the learning activities... And the messages that are in our materials of the activities, the learning aims and objectives are about getting the student to have undertaken a learning process to prepare them for the assessment. However, if you take the assessment questions simply as the first and only objective, the students are being supposedly coached for an assessment but without understanding what the assessment is trying to assess.

I have said this some many times that if students pay attention to the London materials and actually use them, they should have absolutely no problem preparing for the exams. I have given this example so many times, if you take the subject guide for CLRI.. Look at the part about The Civil Justice Process. One of the activities involves reading this extract from HG right and then answer some questions at the end of it, and one question asks whether HG believes that there is consensus about the aims of the Civil Justice Process, and if not, why and what are the consequences. Right, activity, so if the guide is being used correctly, the student should be doing this activity after their primary reading and ideally, their institutions should be guiding them through the activity etc etc. Now, if they have done that, look at the exam paper, which year was it, 2006, 2007? One of the questions was [It is difficult to judge the success of reform of the civil justice system as we lack agreement on appropriate aims and objectives of the system. Discuss]

So if the student had done the recommended reading and more importantly taken notice of the learning outcomes in the chapter and worked through by matching them against the activity and doing the activity, they should have no problem in answering this question. They would be well prepared for it and have all the appropriate information. So the messages are there and it should not be difficult for any student to know what is coming out in the exams if they use the material, all the clues are there.

And that also ties in with the exams and the marking right? It makes sense that if we ask a question in the paper, the student who actually answers that question would get good marks and that means tailoring the information or knowledge or whatever to the actual question asked, not what they (the student) thinks should have been asked. There's no point going on and on giving details of what reforms Lord Woolf has made to the civil justice system when the question actually asked whether success of reforms

can be judged when there is no agreement as to what the aims and objectives of the legal system should be.

The examinations are very fair in the sense that if student actually took notice of what the examiners are saying they would know what is expected and what the examiners are looking for. Remember that year when R v. James (2006) came out and in the recent developments published just before the exams I made a point of referring to the decision, made a point of stating how it impacted the doctrine of judicial precedent and stated that students should read the judicial decision and provided a link where students could access the actual decision...How many more clues do you need? And in the examination two months later, there's a question asking the students to examine the doctrine of precedent in light of the decision in R v. James, and there were so many students, you wouldn't believe, that went on and on explaining how precedent worked and its benefits in the legal system with not even one mention of R v. James when it was SPECIFICALLY asked in the question, so obviously expectations and criteria are clearly not met there."

However, does a student actually achieve the level of integration into a community where they understand that this is the process expected? Data from other academics support the claim that messages with regards to tasks and assessment criteria are believed to be communicated to students.

"I think my expectations are that they engage with the subject guide, that they have obviously engaged with the case law and engaged with the material that we have provided and I obviously expect them to have consulted with the textbook. There is probably an expectation that they are able to apply the materials not just what we have given but stuff that they look at on their own, online material for example. This is usually communicated via the recent developments. For family law, the recent developments are quite full because there is a lot of development and I consider quite a crucial tool of communication with the student. It's saying where we're at, at the moment." (Examiner in Public Law, Criminal Law, Family Law and Civil and Criminal Procedure)

"You do wonder whether the messages you are putting out are being received in the correct spirit so to speak. When writing the examiners' report, one thing I say is that we want the students to be critical, we want you to criticise the theories, judgements etc. But the students used to say that we don't find the criticisms in the textbook, which is fair enough, so that's why we produce the subject guides. To give the criticisms or at least to think about the issues you should be criticising or questioning. But the students are clearly not reading the subject guide [in the intended way] because they are not producing the sort of critical answers we want, which is crazy as the subject guides is written by the chief examiner and the deputy chief. What my main worry is, that students are not using the study guides and are instead relying on those recycled notes given out by those institutions. External students never get to talk to the examiner, internal students are taught by the examiner, so they have a good idea of how the examiner thinks and what expects. So since the study guides are generally written by the chief examiners, if you want to know what the examiner is thinking, read the study guide." (Former CE in Law of Trusts, Examiner in Land Law)

Despite this view from many of the UOL academics responsible for assessment, there has been some challenge to the view that the messages put out by the assessors are

explicit and easily understood by the students and by the independent third party institutions that are responsible for the course instruction and assisting students to prepare for the assessment.

"The materials for individual subjects vary. I think also with CLRI, there is some confusion over how the chapters of the study guide correlate with the chapters in the study pack. There are certain issues which are touched upon in the study guide but then do not seemed to be mentioned at all in the study pack, so the students are not very sure how and where the gaps are supposed to be filled. Like land law, if you look at the subjects guide at the start of every chapter, it directs you clearly to the relevant corresponding chapter in the study pack and the textbook and students are very clear on the basic reading that they have to do for reach chapter... Some study guides are excellent, but I know in some subjects though, some of them are slightly wanting in the sense that some of them are very out of date. Like Tort, the last edition is 2005, so that is very old. Employment law is seriously inadequate, also 2005 edition. I know there are recent developments but they have to be incorporated into the main guide periodically. But outside of these anomalies, overall they are very good. Of course, I don't really teach all the subjects so there may be others. But these two that I know. And I am surprised at Tort especially, since it is core subjects." (Principal/Lecturer- third party institution, Jamaica)

"I tell the students that the subject guide is what will see us through. But some guides are a bit more comprehensive than others. For Administrative law, the guide is a less comprehensive and if you are used to the others (more comprehensive study guides), it can be quite bare and you have to do a lot of supplementing." (Principal/Lecturer- third party institution, Bangladesh)

"I tell the students that it's crucial for them to refer to previous examiners' reports because that is really the only form of feedback we get from the examiners and to know what they are thinking but it is frustrating sometimes as the reports are not always clear or useful. Some reports are fairly detailed and they tell the students what issues the examiners would have like to see identified and cases etc but some are so brief...like maybe something like, they say: oh this question was poorly answered or very few students attempted this question, but doesn't go on to say why or elaborate further. For example, like if very few students attempted a particular question maybe it's because they were intimidated by the type of question or didn't really understand it, so if the examiner can go on to say well, this is what I would have like to see or this is roughly how you would answer it, not really a model answer per se but maybe the idea of a model answer if you know what I mean?" (Lecturer- third party institution, Trinidad and Tobago)

The view gleaned from this data shows that the staff at independent third party institutions do not dispute that the material provided by UOL, such as study guides and examiners reports are crucial and useful tools of communication in helping students decipher assessment tasks and assessment criteria, but the main concern is that the messages are being put out inconsistently depending on the individual subjects the student is reading in the degree. This represents a severe challenge to assessment effectiveness as it contradicts the element of explicitness and consequently validity since the assessment tasks can only be judged as valid if the learning outcomes and the material provided to help students achieve those outcomes are of coherent and consistent standard for all subjects. It also contradicts the element of reliability. It would

certainly be very difficult to conclude that the assessment procedure is reliable if the assessors are under the impression that students have been given every opportunity and available resource to be fully aware of the expected assessment tasks and criteria, but in reality the level of awareness on the part of the student varies depending on the quality of the messages contained in the resources provided by the university for individual subjects.

Distressingly, the view that some of the subject guides, agreed in general by the academics and assessors at the university as being the main resource for communicating learning outcomes and assessment expectations, may not be entirely fit for purpose is shared by at least one of the academics at the UOL who is also responsible for assessment.

“Well, they used to just give a syllabus...and limited guidance ...The guide was not meant to be the course. But now there are expected to have feedback in exercises and be presented in a certain way, so a lot of it is just, you know, stuff that if you ask people to do now it would just... Of course, you know, now they’re (academics) used to it, because you’re supposed to write the aims and objectives for your course, and the outcomes, and, you know, learning outcomes.

But people didn’t do that when... or back then in 2003 or so it was really only just coming in for people then, and I still don’t like those things – I mean some people do, but frankly a lot [of] people just sit there and just say these vague and senseless things, right. That they don’t really assist a student in studying, it makes it... it has the potential, at least, or the danger, at least, of dumbing-down the student’s understanding of the subjects because it basically says, you know, learn this fact, you know; what you’re going to learn in this is this set of things, at the end you should, you know, be able to do this, right. And if you appreciate that Law is not learning a rule book, it’s about getting familiar with the way of doing a certain sort of analysis, right, then it’s very hard to write that in terms of, you know, outcomes. I mean unless they’re just, you know, bull shit outcomes, you know, stuff like you will be able to apply this set of material to problem questions and so on. Just generic stuff which is not really helpful when you get down to it And there’s nothing in the subject guide that’s going to guarantee anybody’s going to be able to apply it, right.

Also they tend to be formulaic in their construction and they may not suit every subject or every examiner. They tell you it’s based upon a background of pedagogical knowledge and so on and there’s a specific way you must do things. I remember being offended that, you know, being told [by the distance learning editor] my introduction is too long; well, I don’t care! It’s a long introduction; I want to say all these things upfront, right. This is what I want to say as an examiner, this is what I want students to think about. But, you know, they made me... they literally made me change it, right, even though I thought it was a great introduction, because this is too long for an introduction according to their specialist standards as learning experts .” (CE in Jurisprudence, Examiner in Law of Trusts)

The same research subject also provides revealing data that not all academics can agree on what outcomes the students should be achieving or the type of assessment tasks to be designed in the examination paper. Further candid data from the same research subject shows that, for at least, one compulsory subject on the ULP taken by students registered on the 12 subject route, there is disagreement between the chief

and deputy chief examiners and contributing authors of the subject guides over the students learning outcomes and assessment task design.

"I mean I think it's absolutely fair to say there are too many topics in the XXX course as it is. That reflects the fact that four people did different parts of the guide. I mean the subject guide is a bit of a dog's breakfast... I mean [a contributing author] included pages and pages of Leviathan and Austin's lectures that the students are meant to read and answer questions on, right, and the rest of us were just writing, you know, stuff. I can criticise other parts of it, including my own. But the point is that the person who was in charge of the project, was, I would say [not managing it coherently]... but the point is I wasn't, when I took over as CE, going to start writing the subject guide until it was determined what should be on it, and I had three or four rounds of drinks with [the two other co-authors] and we still couldn't agree on what should be in it and what to cut down on, and what to put in. And since [one of the other co-authors] was the DCE, I could hardly just override him. So I mean it's... but it's true, there's more in it than we teach at the [name of UOL college]. So I mean I admit that it is a problem.

For example, ok, I'm trying to remember what the study guide said about this. [The previous CE] wrote the stuff on XX [a particular scholar], right? He is [greatly influenced by that scholar], so he thinks you should read XX [a particular book by that scholar] over and over, right. So I'm sure that means in terms of what you're supposed to read in material instructed the subject guide's completely unbalanced. There's only one question in the examination on [that scholar] every year, right, so you could do all the reading in the world and you'd only have one opportunity to answer it, right? So I mean you can tell me... and frankly, if the students paid attention to the CER's, they'd know. I mean you don't have to do the whole syllabus by any means. And they [the students], well, none of them do. You only get two or three answers every year on I don't know Y or X or whatever. You know, nobody answers the question because nobody studies it; who cares if they don't? But for the exams to consistently ask a question on it every year? It's just a waste of questions. They should be injecting wiser questions on Hart or something because students do study that and to waste a question on something no one studies, it gives us (the student) one less choice, right. .. so I don't think that the XX course is, contrary to what feedback we get, is onerous. The subject guide in terms of what its reported reputation as being difficult to use or digest is true, but that's also true of a lot of the other subject guides. You know, the same comments can be said about the guide for YY." (CE in Jurisprudence, Examiner in Law of Trusts)

The above narrative extract fits with issues raised in the previous discussion of identity (chapter Four). When asked about the particular subject concerned the former director responded that "the CE is forgetting that it was a convention that that subject NOT fit any one person's or one College's perception of XX but different conception that different colleges in the consortium have." The former CE of that subject in interview relates below how he had reacted to what he perceived as attempts at "standardisation" and wanted "academic freedom":

"If you want to know the truth, one of the reasons I got out [of examining for the programme] in 2006 was I didn't like the way it was becoming very administratively closed. It was as though the whole thing was run by the administrators. Before, it used to be so much more academic. I mean, the UOL was founded by academics and that continued on into what became the External Programme. Now it looks like

management took over. They'd tell you how to teach and all that kind of things. The relationship between the academics and the administrators used to be fairly good but they could be a bit bossy. It seemed to me to get totally bossy and silly around 2004 onwards... What happens is you get a manager in and they want to clean up procedures so a whole lot of [new] procedures came in. Suddenly, more and more meetings... A huge agenda. Huge discussion about the aims and objectives of the course and the teaching methods that were appropriate. What difference was it making? ... It was just formalising everything and once you formalise things it takes the zing out of it. Y [former Director] brought in this distance learning editor who worked on all, yes all, the subject guides so that they would be consistent, but I don't see how you can have standardised aims and objectives across the board for all the various subjects on offer in the programme. That's demeaning to the subjects, to the individual subtleties and jurisprudence in each subject. Can they be broken down into a few simply stated sentences of aims and objectives which are matched with those of another subject? You think what the hell? Do they want me to come in and take a genuine academic interest in this wonderful scheme or are you going to treat me as just a knowledge worker who's bossed around and so on? You think, well if it's the latter - which I thought it was - stuff you, I'm getting out of it!" (Former CE in Jurisprudence and Evidence, Former acting CE in Criminal Law)

The opinions put forward explicitly reveal the tensions between explicitness and transparency and what may be loosely termed "academic freedom". Referring again to identity there are a very substantial number of individuals, CEs, examiners, tutors in third party institutions, students and Quality Assurance managers, which in the words of Peters (2001) are encountering a "different academic infrastructure" from traditional face to face campus teaching and assessment. If in Peter's oft quoted phrase distance learning is a (semi) industrial process, autonomy is necessarily constrained by standardisation.

Consider the "induction" of new examiners. Examiners, upon appointment are given or referred to the official marking criteria as published to the students and are also provided with a set of regulations which inform them of the consequence of awarding particular marks. However, explicit marking guidelines are only recent, they are expected to exercise professional judgment but while long standing examiners may have been absorbed into a culture many of the examiners do not teach at any of the UOL colleges and consequently, are exposed or absorbed into an assessment practice and criteria at their own universities of employment. It may even be argued that it is simplistic to think that there can be standardised criteria even amongst the UOL colleges, which enjoy a fair amount of diversity. A former deputy director was clear on induction: "ideally we would want to hold examiner induction and training sessions, but there were considerable problems with coordination, finding a right date for everyone". Currently there have been some "away days" for the core staff and CEs and new contracts for CEs in the core subjects that take on more responsibilities as "subject co-ordinators", but as the following quote illustrates a tension continues between the semi industrial process and individual ownership: "When I recently came in as CE and subject co-ordinator for XX subject I wanted to make it my subject, my materials and my examining team".

Tensions clearly exist between the types of communication required and individual expectations. The following quote was transcribed from notes taken during

contemporaneous, casual, non interview conversation with the subject who is an examiner but based in a non-UOL university and is included with permission.

"It amazes me sometimes when I see some of the things the examiners [Chief Examiners] write in their examiners' report... You get the feedback on a certain question that was in the exam, and the examiner is saying: Oh, this question was poorly done by students this year, and here's what we expect to see, and you need to quote these cases and these reports and to bring up all these issues. And I think to myself, are they serious? It's as if they lose all sense of reality! Of course, you could and should do all those things in a perfect answer but the students are supposed to answer a question within 45 minutes or so and there's only so much you can do in that time. So when you mark, you need to have those circumstances in mind and adjust your criteria of a good answer accordingly. I feel like saying to them: You try writing an answer to fit your own criteria, on the spot, in 45 minutes without prior knowledge of the question and they won't be able to do it. So you can't blame the students sometimes, they look at previous years examiners' reports and they think oh, the examiner wants to see me write all this information and so they resort to memorising, reciting and then you have a whole other set of problems there.

If I set unreasonable criteria in the exams in my university and half or more of the students fail, I am personally called to account for that dreadful performance. My teaching and my assessment design and criteria are held to scrutiny and I have to justify them and show how it came about that my teaching was not sufficient to prepare the students adequately to reach my own assessment criteria. In the ULP, such mass failure is blamed on the students, oh they were not taught well, oh the programme is open entry, so you have people of various abilities, therefore large failures whatever. I bet you they would not do the same at their colleges where they teach internally, they wouldn't be allowed to get away with it" (Examiner in Public Law and EU Law)

When the subject was asked in further conversation prompted by a third party not involved in the research whether the assessment criteria set by the UOL undergraduate laws programme was higher than those of other universities, the subject said:

"Yes, it's a very difficult course and a very difficult set of exams. The UOL has always had a high standard, which they should indeed. And so do many other universities. I do think the London standard is higher so to speak in the sense that the students are sitting for very difficult exams, judged by sometimes I think, quite unreasonable, mysterious criteria. Students studying internally have the luxury of having their course sort of, tailored to the exam expectations." (Examiner in Public Law and EU Law)

Another examiner provided an interesting opinion on the claim that marking criteria on the programme seemed to be stricter than those of other universities or indeed even, in the UOL colleges for students studying internally.

"Some examiners really have a chip on their shoulder when it comes to this programme. Why? I honestly have no idea, but I think it's because they want to flex a bit of their muscle to stress the legitimacy of this programme and their association with it. Like they want to prove that this is not just some two bit little distance learning degree mill but a proper university with history and standards and all that. That's all well and good, but they have to be realistic in their standards. No one is suggesting to

lower the standards because these students are studying in very difficult conditions or are sometimes deprived, underprivileged, whatever. No one is suggesting that. But at the same time, you don't have to deliberately make your standards much higher to prove a point. I really think some examiners have this attitude where they feel that because the external students may not have the 4 As at sixth form college to read law at their university, that they must prove something extra to get marks that they would automatically award to their internal students.” (Examiner in Public Law, Criminal Law and Family Law)

The demand for total explicitness and transparency is made strongly by the head of an independent third party institution.

“For years I have been trying to find out the intricacies of the marking process of the [UOL ULP]...It seems to me be very mysterious. The marking criteria are not detailed enough, and if you try to figure it out by looking at the examiners' reports, they seem to be unclear as well. In fact, some years, you see very vague feedback in the reports, just very general statements on where the students went wrong or what they have missed out, but they don't actually tell the students what a good answer should look like. Also, I have been questioning the governance of the whole thing. All the literature always state that UOL is an examining and awarding body and the students are always told by us that the papers are set and marked by London academics, when in fact many of the examiners are not teaching in UOL”. (Head of third party institution – London, quote extracted from contemporaneous notes taken during anecdotal conversation by permission)

This view is apparently dismissed by a veteran former examiner and UOL academic as a false worry that can easily be addressed by ensuring the integrity of the assessment process through robust procedures in appointing appropriate examiners, whether they are primarily employed in the UOL colleges or other universities.

“...I don't know how much overseeing of me, for example, would change my standards. I'm not going to lower or raise my standards or anything. My standards are my standards, determined by me through my professional knowledge and experience and my integrity of the subject that I teach and research. Those are the categories I work within. If an administrator wants to say that well what you've given a first to is in fact not a 70 it's a 90, that wouldn't bother me. It falls within what I determine to be a first and quibbling over the individual mark is an issue of personal taste... when you're marking you've got a professional task to do and you make your judgement about what it is. Partly I suppose what makes the University of London what it is, is because people are marking to that standard and so if it's an external degree or an external student or an internal student then you mark the same way and apply the same standard.

Amongst the good universities you'll find the standards pretty much coterminous and the good universities seem to employ the same people from other universities. You know what the examining standards are at EE, for example, because you've been an external examiner there and most of us have been around some four, five or six top or well ranked universities that also send their externals to us. I don't know how much about what is put in place to ensure uniformity of standard because it's very difficult to see what you can do. You can't just tell a person mark harder or more leniently, you can't do that. What you've got to do is make sure you don't appoint people with bad

judgement to examining boards. .. London has measures and standards in their selection and appointment criteria of examiners. Certainly when I was examining, there was no examiner on the boards that I knew of or could identify as having poor standards or were incompetent in anyway.” (Former CE in Jurisprudence and Evidence, former acting CE in Criminal Law)

According to the ULP Self Evaluation Document (2012:41): “The allocation of first and second markers is carried out by a Joint Chair of the Board of Examiners Usually markers are given equal amounts of first and second marking and (except in the smaller courses) paired with several other markers. New markers are paired with the Chief and/or Deputy and/or other experienced markers. These processes significantly augment the prospects of identifying any potential disparities and enable swift remedial interventions. It is worth noting that because examiners are not appointed to the Board unless they have experience (usually two years) of undergraduate laws examining in a UK University. Even our ‘new’ examiners are not new to examining and many bring considerable experience to the Board”.

However, the issue of accountability and transparency does rear its head in the contemplation of many, even amongst examiners themselves. *“There are now so many examiners, what are their motives? Do all have an allegiance to the programme or are they just after the money? Can they really put in the same commitment that they would in their own institutions where their Heads of Department would be seeing the pass rates and noting student feedback?”* (An examiner, quote taken during informal conversation).

Statistical data on the examination is reviewed by the Examination panel of the ULC. However there is limited feedback to individual examiners. Each year problems are reviewed and some examiners are taken off the board for reasons such as very late production of marks, not communicating and if their scripts had to be 3rd marked due to other examiners referring them as unfair.

As the interview narrative have made clear there are challenges to accountability and transparency in the assessment process, however, whether it occurs more frequently or at a level greater than that of the UOL colleges or other comparable universities is a matter of debate and requires research data beyond the scope of the thesis.

It is also impossible, despite the measures put in place by the UOL ULP to regulate or prevent incidences which may adversely affect assessment reliability and consistency. Bloxham and Boyd (2007) identify several factors which may affect an individual assessor’s consistency. The factors may not be serious or obvious enough to require the assessor to formally justify or account for their final mark given, but affect their judgement nonetheless. Such factors include the amount of time spent marking, overall as well as on individual scripts, personal bias or preferences towards certain academic viewpoints, how much leeway to afford to grammatical, spelling or punctuation errors or any tendency towards “defensive marking”. These issues are certainly not unique to the ULP and represent a challenge to assessment in any HE institution

Chapter Six

Teaching and Learning

6.1 Teaching

In his Presidential Address delivered to the Society of Public Teachers of Law at its annual meeting held in Oxford in 1924 Holdsworth (1925) highlighted the growing recognition of the rise of what he termed as the third branch of the legal profession, that of the profession of public teachers of law; the growth of this new class of profession raised for him several questions, the most fundamental of which concerned the aims and methods of legal education. Holdsworth identified four sub categories of issues that required clear and coherent agreement.

The first was recognising the need for systematic teaching of law. Holdsworth drew on recollections of previous centuries of legal education (chiefly provided by practicing members of the legal profession) to paint a dismal picture of a haphazard, confusing and uninspiring state of affairs. Pupils were generally left to their own devices and were not guided by basic principles upon which to build their knowledge.

The second was agreeing the kind of information which beginner students needed: Holdsworth argued that students should be required to have some amount of pre legal education in Latin, French and English history, while the legal information taught to them should be of the kind that through books and lectures “put the fundamental principles of the law in clear shape, and in their due relation to one another, that students have been given a chance to attain a real understanding of the law” (Holdsworth, 1925:4).

The third was how this information should be supplied: Holdsworth recommended a system of formal lectures, classes for informal discussion and where possible, a tutorial system of personal contact with the teachers with a small number of students per session. The formal lecture was to impart the essential basic legal rules and principles: “The student must get down accurately the important rules which the lecturer wishes to explain, and upon which he is going to enlarge... By means of these formal lectures the teacher can stress what to his mind are the important parts of the subject. He can call the attention of his students to recent developments made either by the courts or the legislature. He can deal with the parts of the subject which his experience tells him cause special difficulties to his students” (Holdsworth, 1925:4). Informal classroom discussions allowed students to engage in analysis and comparisons of cases and to argue the application of principles to facts by analogy. Finally the tutorial system allows the teacher to devote individual attention to the students and to engage all students in a more personal manner. This allows the tutor to get a measure of the individual student’s character and capabilities and to advise him accordingly and help plan his mode and course of instruction. It also allows the tutor to ensure the students is working upon the correct lines and ensures that the student is consistently working on a set task which he is supposed to produce during the tutorial session, thus honing his writing and research skills.

The fourth was the appropriate curriculum for the beginner or undergraduate law students and Holdsworth (1925:6) posits that a first degree course should cover “Roman Law, Jurisprudence, International Law, and the most important parts of English Law, such as property, contracts, torts, criminal law, constitutional law, and legal history”.

Holdsworth’s views represent the orthodoxy for the twentieth century: a successful teacher of law should be able to systematically impart legal doctrine, guide and facilitate discussions to engage the students in analysis and critical thinking and also provide personal mentorship to the student. While this lays out a template that still holds, conditions change.

Sherr and Sugarman (2000) identify factors such as the new economy, Europeanisation, and globalisation as contributing to a splintering of what was previously regarded as core legal subjects with different systems of regulation, principles and values arising. New and overlapping areas of legal study have developed resulting in “pluralisation, diversification and fragmentation of the legal subject disciplines”... Consequently important questions arise “about the distinctiveness of law, legal theory and legal education and the extent to which there is still a ‘core’ or canon within and between the substantive subject areas of law ...legal theory and legal education....Traditional legal educational methods and assumptions have been critiqued by those involved in legal ethics, socio-legal studies, critical legal studies, and skills education (including clinical programmes). This choice of methods of learning and assessment has been considerably extended and, in part, inspired by new theories of education and the new opportunities afforded by the revolution in information and communications technology. Yet the gulf between theory, the specific fields of law..., and legal education is still large” (Sherr and Sugarman, 2000:167).

Cownie identifies a possible reason for the gulf between theory, fields of law and legal education, the relative backseat that teaching has taken to research in higher education. Referring to Becher and Kogan (1992), Cownie (1999, 2000) recognises that members of the legal academic profession build their reputation through their contribution to research and publication. The focus on research, especially increased through the pressure placed by the Research Assessment Exercises conducted in order to achieve higher ratings and funding for the university’s law department, mean that academics have little time or energy left over to devote themselves to honing or developing their teaching theory and skills. Indeed, it is almost perverse that as members of the profession progress through the professional ladder the impetus and pressure for research become greater and subsequently, the leaders of the profession “who are the most influential members of the peer group are not perceived as regarding teaching as a serious intellectual task” (Cownie, 1999: 42).

Becher and Kogan (1992) suggested that teaching - being a relatively private activity between the teacher and student - did not experience the same scrutiny and critique that openly published research does. It was perhaps easier for poor quality or indifferent teaching to carry on undetected.

Cownie (1999) argues that in order for legal academics to take teaching seriously, they should ensure that their teaching is firmly grounded in theory, specifically the philosophy of education and education theory. They should consider “the nature of education itself, its purpose and place in society”, and look to “the work of cognitive

psychologists, interested in how humans understand reason and comprehend”, be familiar with “learning theories and in particular in the relations between students, learning and teaching” (Cownie, 1999:49).

It is perhaps understandable, though not excusable, that a legal academic employed in a university faced with a heavy research requirement may consider attempts to ground and assess their teaching with theory an additional and onerous task for which time does not permit. However, if this is the situation internally, the great difficulty this poses for the ULP is clear from the former Director’s narrative of development as revealed in the chapter on identity.

Moreover, it may not appear at first sight that the issue of the burden of research pushing teaching to the back burner is not a pressing matter for the UOL Laws programme. However, as the former Director puts it, it impacts strongly on the ability of the programme to get academics to provide learning content that is regularly updated:

“I am conscious that for all the contracts entered into [to revise the subject guide etc], the reality of life in the colleges is that college priorities, in particular research and publishing, take first call. You do not get promoted for your involvement in the ULP, you get promoted for your [research] writing. When it comes to the crunch, College research pressure is top dog...” (Former Director)

The role of independent third party institutions has been examined in an earlier chapter. Existing as independent private commercial concerns, such institutions are not subject to the pressures of ranking and funding which have had such a strong effect on UK universities in recent years. Although local educational authorities may require staff to hold post graduate degrees for example, there is no requirement for continued research. Their sole task is to teach students in a way which enables them to pass and do well in the examinations that they have entered for. Teaching is the main enterprise and concern: what are the numbers? If currently (2013) the UOL has c. 16,000 students registered for the LLB even allowing for a significant number not being active at any one time the number receiving tuition from a 3rd party institution is probably over 12,000. The total internal undergraduate students at the Law Schools of the UOL are less than half of that number! Therefore the majority of students studying law at UOL are taught by these institutions, but are they counted when teaching and learning is considered? Until c. 2008 there was no system of formal recognition and these institutions were a reality but only ‘informally’ considered; now many have a ‘formal relationship’, which means they have entered into a system wherein they have been inspected, assessed against UOL criteria and given either a ‘recognised’ or ‘affiliate’ status. Thus, this chapter seeks to examine how the ULP is taught in those institutions, how students therein located learn and whether a coherent teaching theory can be identified.

6.2 Teaching in Independent Third Party institutions

All the institutions observed in the research operate using a model somewhat similar to the one recommended by Holdsworth (1925). Classes, whether for full or part time students, are run on a system of mass lectures and what the institutions term as tutorials which are not exactly the personal sessions as described by Holdsworth (1925) but rather a combination of informal classroom discussion on specific issues or

a review of prepared work previously set. Indeed, students studying internally in English universities attend tutorials of a similar style generally in groups of 8-10 and the tutorial system of extremely personal contact prescribed by Holdsworth does not seem to be practiced internally in English universities other than Oxford and Cambridge. The lectures are generally held for all the students registered for that subject which may range in the core subjects up to 250 students in the larger institutions in the dominant markets (Hong Kong, Malaysia, c. 100 in Bangladesh and Trinidad & Tobago), and while the students may be split into smaller sub groups for the tutorial session, in observation and interview, fieldwork observation showed that the tutorial sessions in the institutions were conducted for students in groups ranging from eight to twenty two or so. The smaller range tended to be for tutorials in optional subjects in the later stage of the degree programme, while compulsory subjects tended to attract more students. From observation sessions and my previous personal experience working as a teacher in an independent third party institution, it is clear that teaching provided in such institutions is very much dominated by the teacher. The lectures are designed to cover specific topics within a subject and the lecturer explains the fundamental terms and concepts of the topic and highlights the relevant legislation and prevailing principles contained in case law. Perhaps in this respect, such lectures do not differ in concept from those conducted in the traditional university setting. However, on closer examination, these lectures are much more detailed and doctrinal.

Lectures conducted for students reading internally last for between 50 minutes to an hour and the lecturer focuses on the contentious areas within the topic and mentions the relevant legislation and cases with perhaps some details on facts and reasoning of major or controversial cases. Students are supposed to follow up on such lectures with further reading of their own, with most universities recommending between 5 – 8 hours of reading per hour of lecture. Handouts either given to students during such lectures or posted on the College VLE cover broadly the material covered during the sessions and a list of essential and recommended reading to be done.

The lectures conducted in the independent third party institutions last between 2 – 4 hours and seek to cover the topic in as much detail as possible. An observation of first year criminal law lectures in institutions across the countries studied show several striking similarities in teaching techniques. The first notable feature is the almost complete dominance of the lecturer who almost seems to be putting on a performance where the goal is to impart as much information as possible. This is perhaps not unique to third party institutions. In the 1950s Edlund (1957) described the lecture system at colleges of the UOL as “an uninterrupted exposition of the law, with frequent textual reference and citation of authority” and this probably held true for other English universities as well. The feature that strikes the observer as being unique is the passivity of the students, which is obvious even in the context of the lecture environment which is necessarily as such since “[T]here is almost a total absence of dialogue between student and lecturer. There is no necessity to prepare specially for a lecture, and, in fact, it is assumed that the students have not prepared for it. Most students do not key their reading to the subjects as they are lectured upon, which brings about an audience of very busy, unresisting notetakers” (Edlund, 1957:18).

In this context, the act of note taking can be seen as a form of active autonomy in passive environment; by taking or making personal notes during the lecture, the student is putting their own understanding on the material being delivered in their own

thoughts and words and such notes act as a direction when doing further reading and research of their own. Observations however show that note taking is practically nonexistent during lectures conducted in the independent third party institutions, the exception being the students in the institutions in Jamaica where there was observed evidence of note taking albeit in an amount and frequency that can only be described as active when put in relative comparison to the other countries observed. In the other four countries, the observations showed that students mainly made notes when specifically told to record something by the lecturer or were given certain material via dictation. Voluntary note taking seemed to be an activity that required some form of direction from the lecturer, for example, when the lecturer wrote or drew something on the board, it was observed that students would then copy that onto their notes.

The second notable feature in the lecture teaching conducted in these institutions is the extremely detailed accompanying handouts provided to the students. These differ greatly from the type of lecture handouts distributed internally in universities. Having seen several of such handouts and through experience of having prepared some during my employment at a third party institution, it seems that the purpose of the handout is to cover the topic being taught in its entirety and to serve as a source of primary reading in itself. Such handouts or lecture notes as they are popularly termed within the independent third party institutions are viewed as part of the tuition package that the student has paid for and in several institutions they are used as a selling point to attract prospective students. The reception area in the institutions visited in Singapore, Malaysia, and Bangladesh and two institutions in Trinidad contained several sample copies of the types of lecture handouts a student could expect to receive as part of their course package.

The third notable feature is the almost complete absence of any questions posed by students to the lecturer. While it is accepted that lectures are teacher dominated and not the appropriate arena to indulge in detailed discussion sessions, the observation showed that all lecturers did pause at certain points throughout their delivery to ask if students had any questions or issues that they wished to clarify before the session went further. This would seem to be the ideal opportunity for the students to seek a quick clarification if they are unsure about any terms used or perhaps to ask for a repeat explanation of a contentious or complicated piece of material, however observation and interviews show that the opportunity of asking a quick question was almost never taken up by the students. Using the series of first year criminal law lectures observed, no questions were asked in the sessions observed in Singapore and Bangladesh and Trinidad, and only two questions were asked during the sessions in Malaysia and Jamaica. Previous employment experience and anecdotal evidence from conversations with lecturers in these institutions do indicate that the students' tendency to ask questions during lectures grow a little more frequent as the academic year progresses and also as they progress through the later years of their degree, perhaps indicating that as students' gain in confidence through the progression of their studies they may be more willing to speak up in lectures.

The passivity of students during lectures have led to some comedic and poignant experiences on the part of some the UOL academics when they have visited the independent third party institutions to give guest lectures, whether at the behest of the institution or on official lecture trips organised by the UOL International Academy. The experience of the Former Director has been revealed in the chapter on identity where

he referred to what he termed “the supermarket theory of education” where the students had seemingly “weighed the notes” of the rival institution.

“...unfortunately the recurring theme that I see is that you may go into a class and you’ll clearly see three groups, I think and this will be whether it’s a first year class or a third year class. You will see a group which are very switched on, they are bright, they sit there. It’s clear their eyes will be wide open, they might think you’re doing something different, whatever, and they’re very keen on this. They’re very receptive and they’re clearly working, trying to use whatever material they’ve got. Then there’ll be another group which basically are in the dark a bit. They’re well intentioned but they really are tacit really, and they don’t know what I’m trying to do in a sense.

I may say at the beginning, ‘What I’m trying to do today is this’, and having said that, you would almost expect them to write it down because if you were teaching a class in London and you came into the lecture and you said, ‘What I’m trying to do in the next fifty minutes is this, these three things’, they would write that down. They would use this as the coat hanger to hang their notes on but here, very few people would actually write that down. And what is quite astonishing often is you’re standing there and very few people take notes in the sense of the way that you are expecting”. (Former Director and current examiner)

“I had the most amazing experience. I went to Penang in Malaysia. I was employed to teach classes on jurisprudence to give two three-hour classes in Penang, or maybe it was one three-hour class. I had to take a drive out to the old Kuala Lumpur airport and then the flight to Penang, then the taxi to pick me up...

A man greeted me there, terribly nice man, I’m not sure if he was a lecturer there, or an administrator ... and he just said to me, they’re (the students) through there. I went through there and there was a group of 10 people, absolutely rigid, in chairs facing me. They looked rigid with fear, 10 people. I can see them right now! I went through there, into the classroom, and I lectured on jurisprudence for three hours non-stop and they didn’t utter a word. I was going down to them and saying, ‘but surely you have a view about this’ and walking along and approaching each of them and saying, ‘what about you? Do you have a view?’ Didn’t say a word! Not one of them.

I came out exhausted and frustrated and the guy who met me when I arrived said, ‘finished?’ I said, yes. He said, ‘your taxi’s waiting’. I said, they didn’t speak a word. He said ‘Oh no I told them not to. They were supposed to listen carefully to you!’ I got into the taxi. It took me off to the airport and I flew back on the evening flight to Kuala Lumpur. That was my day. It was so strange”. (Former CE in Jurisprudence and Evidence, Former Acting CE in Criminal Law)

Edlund (1957) described teacher dominance and student passivity was de facto position in the lecture environment: contemporary education theory stresses student orientated learning where the teacher is meant to stimulate the student and recognises that student activity is key to learning. Yet the dominance of the teacher and the emphasis on teaching material – or exposition – is still a position that is not entirely unique to the independent third party institutions. Several of the UOL academics and examiners interviewed stated that their approach towards lectures when teaching internally were also very much “one way” in terms of delivery of material on their part.

Discourse between lecturer and student is difficult when conducting large group lectures.

"My style or approach...in lectures is very much 'chalk and talk'. And I know people sort of say that disparagingly these days because it's seen as old fashioned and we must have all these new teaching and learning techniques, but for a straight 50 minute lecture, that's what I do. I have to get the students to understand the basic definitions and concepts and leading principles, highlight the cases where the principles were derived from, highlight the relevant statutes or any upcoming changes in the statute and then of course I have to direct the students to what they are supposed to be reading. The student studying internally is expected to spend their time in the library looking for the relevant material, or going over the material that has been given to them. That's what they are supposed to do full time. So the lecture sets out the framework for that topic and then they go from there." (Examiner in Public Law, Criminal Law, Family Law and Civil and Criminal Procedure)

"Yep, that's the trouble with the lecturing. You've got no way really to get student feedback unless you do it sort of on an interactive basis. But there is no time. When I go out to teach the external students in Malaysia, Hong Kong and all that, I am given a block of time over a few days, so maybe 6 hours a day for 4 days and I've to go over the entire subject. You cannot cover the whole trust syllabus in 24 hours. If you do it on a tutorial basis, you can't expect them to have read before, because I have tried that - setting out the material and work before expecting the students to have prepared for the tutorial or seminar session. The students who are working full time simply haven't got the time to do it or they say they haven't. So there lies the difficulty I guess. I don't think there is any difference in the way I conduct I lecture when I teach for the External students overseas or when I teach internally in Oxford, I lecture at the same level and style. But at Oxford, I do other things like tutorials, which are about 2 students to a teacher and there is obviously no facility for that with the external students. Certainly they do not have personal sessions with me and I don't think they do with the local teachers as well. But I think lecturing in this intense way is intellectually challenging for me. At Oxford, you don't teach the whole course from start to finish. You do a bit of it. So it's academically challenging to see the whole series of lectures together" (Former CE in Law of Trusts, Examiner in Land Law)

From the opinions of the UOL academics and examiners, it is clear that they do not regard the teacher dominated technique of mass lectures to be a poor technique in itself, however, it has to be used in conjunction with a tutorial or discussion session with smaller groups of students where a student has the opportunity to ask questions, engage in discussion with the tutor and other students and also to demonstrate that they have done the required research, reading or writing activities that have been set for them. It also provides the tutor with the opportunity to give feedback to the student on the progress of their work and to ask questions which would require an active linguistic and cognitive response from the part of the student (Admiraal, Wubbels and Pilot, 1999), thus effectively assisting them in their learning.

These sessions are supplementary and complementary to the lecture and require a different teaching skill on the part of the tutor. The tutor would have to design activities and questions that are able to assess and assist students in their learning. Following Admiraal, Wubbels and Pilot (1999), assessment type activities and questions are designed to gauge the students' level of understanding and ability, while assistance

type activities and questions are designed to “produce a mental operation that the student could or would not produce unassisted” (Admiraal, Wubbels and Pilot, 1999:689-690).

Such tutorial or seminar session conducted for students reading internally in a university would generally consist of about 8 to 10 students to a group and the tasks set for them would usually consist of questions which the students are supposed to draft an answer to in prose ready to be presented during the session. Such questions can be in the style of an essay question or a problem based factual scenario to which the students are supposed to draft advice. Tutors have also been known to set short mock trial sessions, or group debates to generate and facilitate discussion.

This concept is certainly embraced by the independent third party institutions. All institutions visited in the study had staff that, when interviewed stated that they conducted tutorial or seminar sessions in conjunction with mass lectures. However, on further question and through observation sessions, it appears that these sessions come to take on the distinct flavour of the lecture.

Observation of the tutorial sessions showed that the activities set for the sessions were for students to attempt previous years’ examination questions as a way of honing their writing skills and examination answering techniques. The students were given a collection of previous years’ examination questions and they would systematically attempt a question or two per session.

However, the fieldwork data showed that students seldom did the required activities prior to the tutorial or seminar session and as such, were unable to contribute effectively, if at all, when the session was underway. Without responses from the students, these sessions could not proceed and the tutor ended up providing the students with the answer to the set questions. This reduced the session, which is supposed to be interactive, to a teacher dominated one where the tutor practically dictates an answer in full to the students who then frantically take it down.

Tutors in the independent third party institutions express some amount of frustration and resignation as to this state of affairs. It would seem from the data that they are very well aware that this technique is counterproductive to the authentic essence of what a tutorial or seminar session should be, but they are also realistic as to the expectations of the students considering the type of environment and conditions that most of them are studying under.

“I do tend to try and design some interesting activities for the students, stuff that would require them to actually read a judgement or perhaps do some research and then they would need to put their findings together and maybe highlight areas which they find contentious or maybe they don’t understand and that would form some base on which we can have discussion in the tutorial. To some extent, I think I have success in doing that with the full time students. So, like right now we have got the project group that we are doing. I think it’s going quite well actually because I just did the Public Law project with them. Having given the students the relevant reading materials to go and research on their own, I found they have gotten to grips with the matter in a lot more detail than they would otherwise do. An example is like there is this team that was doing project work on retrospective law and the relation to the rule of law. So they ended up reading [ancient cases] and they actually looked at the development of the law from 1700 all

the way till present day. Something that a lot of students don't do when we teach in the normal style.

So there is some success when the students do try, but majority of our students are part timers and they simply do not have the time. Part time classes we are running twice a week, at most three times a week. it is actually a little impractical time wise to actually run project sessions for them. Although they should be doing it on their own, they should be reading on their own. I try and encourage them once in a while, asking them to read certain articles or tell them about articles that we will see. But I really do think that they become over-reliant on the idea that we would invariably summarize this information for them and present it to them in a handy manner". (Lecturer- third party institution, Singapore)

"I mean I think I enjoy a class where there is interaction. Like for example what now we are doing with our full time students... there's just a few of them though, we get part time mainly ... is to pose to them, you know, actually sometimes it may just be interrogams taken from the subject guides, where we actually pose to the students questions which are not actually previous exam questions, but important general questions where law is concerned. And I do enjoy those kinds of sessions. They would come, giving their opinions. Sometimes they hang back and keep silent of course but they can just talk about their opinions. That is good and enjoyable for me. Not something which I would expect, but I think it's a bit enjoyable both for me as a lecturer and for the students. The only thing, again, is that I can't be doing this with the part time students because we have a chapter to complete. And of course for them, the main concern is to finish teaching the syllabus before revision starts for the exams". (Lecturer- third party institution, Singapore/ Malaysia)

"I really don't expect the students to actively contribute during the tutorials. I don't tell them that of course, I still nag them to do the work to attempt the questions before class. But I also know that I will end up providing them with the answer, sometimes drafting a whole outline answer for them. I think that time is really a major factor here in Singapore. The students know they have to do work on their own. A lot of the students previously have undergraduate degrees in other subjects, they have been in a traditional type university, you know internal students, previously, so they know what a tutorial should be like, but they just do not have the time between work and family. To be honest, that's why they have come to us, paid us money, in a way to make life easier for them, or what they think is easier for them". (Principal/Lecturer- third party institution, Singapore)

It is indeed telling that the first interview subject stated that setting tutorial activities which assist learning is not something that they would do in the normal style of teaching that generally takes place. It seems that although teachers in the independent third party institutions recognise the value of tutorial activities designed to foster cognitive response, they are unable to incorporate them throughout their teaching due to the practical difficulties they face with their student demographic. However, the lack of time hampering the part time student does not explain why the same situation goes on in Malaysia and Bangladesh where the majority of the students are full time students of traditional university age. These students, largely, do not have the commitments of full time employment and family responsibilities; yet, the research data shows that the same reticence and lack of preparation hampers the effective conduct of a tutorial session in the local independent third party institutions.

"The students here are mostly very enthusiastic and they are very hardworking. Most of them are young and if you tell them to do something they will. Tell them to read this chapter or read that article or case and they will. But they don't want to speak up in class. So it is very difficult to get a discussion going. You get the same one two or maybe three characters who will speak up during the tutorial and the rest just sit there and after a while, the ones who speak don't want to do so anymore because maybe they feel embarrassed or people may think they are showing off". (Director of Studies/Lecturer- third party institution, Malaysia)

"It's definitely teacher centred but then again it is a peculiar situation in Malaysia where the students have always been exposed to education from day one which is very teacher oriented. So it's a state of affairs that for the students it is very normal to have your teacher speak throughout the whole class and tell you what you need to know and you learn that". (Former Senior Manager/Lecturer- third party institution, Malaysia,)

"I do expect students to actively participate in class, well at least for the tutorials because in the lectures it is more of a one way delivery, but in the tutorials, there are instances where you ask questions and you expect the students to give feedback about what they have read and whether they agree with the current position or have opinions about what the law should be. I think UOL is trying to mould a law student in the true sense, one that is able to think and argue and back up their arguments with materials they have sourced. But I think here the students don't look at it like that... Give me an answer to a particular question and I'll just remember and repeat it is the general attitude" (Principal/Lecturer- third party institution, Malaysia)

"When students come in, it's almost as if they are expecting to be spoon-fed. They expect notes prepared and printed for them and answers to past year questions issued during tutorial. The amount of time they spend preparing for class itself is zero if you ask me. And this is under circumstances where we provide them all the support, with outline schedules informing them on what we are going to cover in a particular tutorial, even to the very question itself. But it appears that they are not responsive as far as that is concerned". (Director of Studies/Lecturer- third party institution, Malaysia)

"Personally, I don't think it is a good way of getting people educated. When we give assignments, it's so difficult to get an assignment out of them. When we get students who are willing to do a bit of work on their own, we are quite happy to help them, but other than that we cannot really do much. When you are an internal student you are forced to do these things...you have to prepare, open your mouth and contribute. Here you can have a tutorial for 1 ½ hours and nobody ever opens their mouth. You are virtually looking at the issues yourself and giving the answer, with no student participation. Surprisingly we get this with students in CLP [Certificate of Legal Practice] tutorials and these are students who are going to the bar and on to practice. So you wonder whether you are producing people who are actually thinking. See [Former Director ULP] yesterday gave this lecture and he was trying to get the students to work through with him on what the judge was saying but they were waiting for him to give the answer instead of working through it". (Principal- third party institution, Malaysia)

"Sometimes I almost lose my temper, I don't of course, but it does make you mad and sad. I mean, I know that when I do a past year exam question in the tutorial, I will be

supplying the answer, so I will go through it with the students, tell them how I would start the answer and how I would frame the issues which are the cases to be applied or argued. All of this they should be doing but I do it, fine, I accept that. But at least you expect them to take notes as you go along, perhaps try to frame their own answer, but it seems that even that is too much hard work for some. I have had students come and ask me if I would type out the answer and distribute it as a handout in class. I mean, if you are not even awake and taking notes then what is it that the students are actually doing?" (Lecturer- third party institution, Singapore/Malaysia)

"I do tell the students to come prepared, both for lectures and tutorials. There are different types of preparation for both. For lectures, I would expect the students to have at least read the relevant chapter in the study guide before attending. To at least familiarise themselves with the main issues in the topic and the learning aims and objectives set by the UOL for that topic. For tutorials, they should have attempted the activity or task that the tutor has set. Mostly we do use past years exams, but sometimes we may just give short small tasks like reading a case and of course we do expect them to do it and be able to speak up in class when called upon. But they [the students] don't do that, I would say maybe about 20% - 30% do that at best". (Principal/Lecturer- third party institution, Bangladesh)

"You do get some, some who do prepare and do the essays and hand in their work, and these are the ones that improve quite quickly because they are practising and they get the marks and comments from us and slowly go from there. But it's hard, difficult to get people to speak up in class or to have discussion and debate. They just don't seem to want to do it. But when you do get the few that do, they are very good. It's always the same few students who speak up and participate and they participate in other things as well. We do organise debates and moot sessions and the students who will take part in those are the ones that will speak up during the tutorials. In fact, when Prof [XXX] from London was here the last time, we had him participate in our mooting finals as a judge and he was very impressed with the students who were doing the moot. But they are not the majority of the students, as we have very large numbers in our intakes, this programme you know is very famous in Bangladesh, and we have many students and when they come to us they come for teaching, they expect us to teach them...I think they see us as a school rather than what a university should be". (Lecturer- third party institution, Bangladesh)

The data quoted certainly accords with personal experience gained from conducting a series of guest lectures in institutions located in the five countries. As part of my previous position of GTA, I conducted sessions in CLRI and Land Law during my research visits and styled these sessions as a combination of lecture and tutorial, spending half the allotted time giving a general lecture on a pre arranged topic highlighting controversial areas and recent developments and the other half of the session posing a series of questions to invite discussion from the students. In that experience in Singapore, Malaysia and Bangladesh, students were extremely reticent to participate and did not voice their opinion even when I posed direct questions to the class. When I resorted to posing questions directly to individual students, the student being questioned would shrug or at best voice a non committal answer such as "It depends on the situation", or "It's possible I guess". It does appear that the students are very reluctant to make equivocal statements or provide a direct opinion. This may

be perhaps due to fear that they may then further be called upon to defend their opinion or have their opinion challenged in front of the class. In the event that students had any questions, it was never to do with the material discussed during the class but rather general questions of study skills, the methods of structuring an essay or frequently examination pointers and techniques. In such cases, the students did not ask the questions during the session but preferred to approach me personally after the session, a scenario that some other UOL academics have observed in their teaching overseas in the third party institutions.

“It’s quite funny really when you go out to these countries for the guest lectures, especially Malaysia and Hong Kong, it’s massive groups, especially Hong Kong and when you ask the students if they have any questions or what do they think of something and you get no response...And you think surely this can’t be true, I mean in a class of 50, 100, 200 plus people and everyone understands everything perfectly? They have no queries, no doubts? Have I actually managed to pitch my class so perfectly that all of them, people with differing abilities, skills, concentration all manage to understand in unison? And then you go for the coffee break and you have a whole queue of students following you wanting to ask you questions personally and you come back from the break and there are all these little notes on your desk with questions for you to address in the next part of the class, all anonymous of course”. (Former CE in Law of Trusts, Examiner in Land Law)

It is difficult to weigh local cultural factors and issues of the pedagogy, for example, the situation differed in my teaching sessions in Trinidad and Jamaica, where I found that students were generally forthcoming during the session I conducted and were willing to speak up when a direct question was posed. Students were willing to contradict an opinion posed by a fellow student or to pose alternative opinions or arguments to statements proposed by the lecturer (myself). In fact, at times the exchanges became so lively that I had to act as a moderator to bring the central line of discussion back on track and had to adjust my planned activities during the session to accommodate the time taken by student discussion. In contrast with Singapore, Malaysia and Bangladesh, the session I conducted in Jamaica and Trinidad felt more in accordance to the type of informal classroom discussions envisioned by Holdsworth (1925) and termed as tutorials by almost all UK universities.

However, this experience does not seem to be shared by the lecturers in the independent third party institutions in Trinidad. According the interview data, the Trinidadian lecturers report the same frustration at lack of student preparation and participation that have been described by their counterparts in Singapore, Malaysia and Bangladesh.

“Students lazy you know...So the more you give them, the better it is for them. That’s the way they think but they don’t see the long term problem. You can give them the answer to one question, but that won’t solve all the questions that may arise in the future. So the best thing to do is to go through the material yourself and understand it, to know where the problem areas are, what others like judges and that have said about it and then to form your own opinion, or to ask yourself whether this case or this principle can be applied in a different situation. But for them, they just want enough to do the examinations and they depend on us to know what that is and give it to them

and if they do not do well, they blame us". (Principal/Lecturer-third party institution, Trinidad and Tobago. Quote obtained through informal conversation and contemporaneous note taking with subject approval)

"Oh you can tell them till you are blue in the face, but it never gets through! You tell them before they sign up for the course that it is not an easy course like some of the other distance courses on the market. They know full well the standards of UOL, they know it's a high standard and not an easy course and they must put in the work. I stress on that during my class, and my staff tell them as well, that you must do the reading, if we set assignments you must do them before coming for the tutorials, if not, you will be lost. But time and again, every time, you will have people coming in unprepared and they just want you to speak and teach and they just sit there like a sponge and they think in that way they can absorb all the information they need. Some of the part timers are in stressful jobs, so I try to cut them some slack, but still they chose to do this course, so they have to work. The full timers have no excuse really, and they do tend to be younger, so you can still bully them a bit and force them to do the work and speak up in class, but it should really be from their own initiative". (Principal/Lecturer- third party institution, Trinidad and Tobago. Quote obtained through informal conversation and contemporaneous note taking with subject approval)

"The typical Trinidadian student? Lazy (laughs!!). Yes, lazy but quite enthusiastic. I think they are dependent on the teachers and they want the solution to be provided for them. It's actually very funny because let's say when you ask a question, they want you to tell them the answer. If you do tell them the answer, they are more than happy to debate or dispute that answer or maybe come up with possible alternatives, which is what they should be doing in the first place in order to reach a reasoned conclusion. I think also that the students tend to want a single definitive answer and are very uneasy with an open ended situation, but as you know, in law, it may not always be possible to reach a single answer or to say for sure what will happen". (Lecturer- third party institution, Trinidad and Tobago)

Thus, there may be particular factors in Jamaica that allow the students to be willing to speak up in class and participate actively in the tutorial sessions. Certainly my observations from the sessions I conducted concurred with the lived experience of the teaching staff of the independent third party institutions.

"Students are not backward in responding in class. They love it and they will participate, so I have never had that problem. They, well, some of them anyway, may not always have done all the preparation before class, they may not have done all the reading or maybe just skimmed it, but where they can contribute in the class or if the discussion goes on something which they know, they will speak and respond". (Principal/Lecturer- third party institution, Jamaica)

"The students are good in that sense and the classes are always lively... They will speak up and they are willing to discuss, with me, with each other...But it's different between the subjects. In CLRI, you get things like debate about jury or the criminal justice system and these are quite practical, general knowledge things and students will have an opinion. But in a subject like Public Law, the students may be less able to argue because they may not be familiar with certain aspects which may be very local to

the English, so it's very foreign and abstract to them, so it's a bit harder. Then subjects like Criminal Law, you do get a lot of discussion but sometimes the discussion may not be entirely relevant, where the student will discuss stuff that is not strictly legal, but more practical involving evidence or procedure and you have to steer them back to discussing the relevant cases and legal principles. But as long as they do speak up in class, I can tell what they have understood and which parts they are having difficulty with and very often, when one student asks a question or makes a remark, someone else will say that they have been thinking or wondering about that too, so these discussions help the whole class in general". (Lecturer- third party institution, Jamaica)

6.3 Resulting Issues

The research data about the teaching methods used in the independent third party institutions evidences the problems examined in the chapter on assessment and grading where the examiners from the UOL have remarked on several occasions that a very large proportion of the examination answers that they receive do not meet the expectations of what the examiners constitute as a good or excellent answer to the questions posed. A frequent comment is that student answers tend to be formulaic and lack critical analysis. Largely, student answers tend to display a healthy amount of knowledge about the general topic on which the question is based but such knowledge is not being used effectively to answer the direct question being posed and alarmingly, at times do not make any reference to the issues raised in the examination question. Instead, the knowledge contained in the students' examination answers is set out in a manner which reads more like a general recitation of relevant legislation and cases.

Brew identifies the consequences of relying on lectures as the sole teaching technique where "the learner is viewed as acquiring a body of knowledge, concepts or information which are assumed to exist externally to them and the lecturer's task is to present such knowledge in as 'objective' a manner as possible. It assumes that by and large the knowledge that is presented (or transmitted) is what the learners acquire... When teaching rests on such a conception of knowledge, there are implications for ideas about how students come to understand that knowledge. The imagery which used to be employed to describe this was of students as 'empty vessels' requiring to be filled. This implied that learning was a passive process; a question of absorbing ideas, concepts, principles as they were presented and reproducing them in the examination. Of course it is more complex than that; particularly because, in Western cultures at least, there is an expectation of critique". (Brew, 1999:294).

The following quotes from the research data do show that this is a live problem with the type of teaching prevalent in the independent third party institution and the drawbacks of the passive lecture style teaching technique make themselves evident in the results of the student's examination answers. Indeed, lack of ability to critique the knowledge that has been presented to them is a major bugbear of examiners.

"It's a problem you see with students all over the world, but it is more evident in external students. They do not really engage with the question but produce a sort of rote learning type of answer. "Oh, here's a question on resulting trust, therefore I shall write everything I know on resulting trust". It's something which is obviously easier to do if you don't understand the material really well. If you do, it's easier to engage with

the question. If your knowledge is just superficial, you don't really have the ability to engage. This year, and I have indicated this in my examiner's report, for some reason, there were identical essays, in PROSE. Same sentence and paragraphs, they even cited the same article on secret trust, which had no relevance to the answer, but it was a recent article. It would seem that they had been told, maybe by their institution that they should put it in to impress the examiner. I think that's probably the main issue, this tendency to recite without engaging with the question". (Former CE in Law of Trusts, Examiner in Land Law)

"I think there are almost always more disappointing scripts than those that reach the ideal. You do get the occasional good script where you can clearly see that the student has done the relevant reading and more importantly they realise what the question is asking and they set out their information to provide an answer to that. Where if it is an essay type question, in the introduction itself, they state right this is what the question is asking, and yes, I agree with it and here's why and they go on to argue their case, or no I disagree and here's why. So rather than just saying oh, here's information, they are saying that the information, understood in this manner, has led me to this conclusion. Or in the case of a problem question, rather than just saying, oh here is the law on hearsay evidence and here's a list of cases and principles about hearsay evidence, they are using the principles to decide whether character A's statement in the question could qualify as hearsay evidence and will it be admissible in court. So it is quite obvious really when a student has just memorised information and when they have understood that information to be able to use it effectively in the examination". (Examiner in CLRI and Evidence)

"With the scripts, you see sometimes very extreme differences in standards. Some scripts are very bad, that you would never get from an internal student and of course, overall the number of poor scripts are much higher than would be in an internal university, but then again the numbers issue is relevant since we have so many more students that a typical intake internally. Some issues, like repeating information without assimilating it, are typical of a lot of students. I think that has been mentioned by examiners very frequently". (Examiner in Public Law)

"The other thing is you are always reading prepared or pre structured answers, sort of what they used to call model answers. They [the students] would have memorised them off one of the model answer books you can get off the market or frequently, their lecturers would have provided them with full answers to previous exam questions and they use that. It's very easy for us to spot these. If a lot of the answers were very similar, and not addressing the question. In [the Law of] Tort, in the topic of defamation especially, the answers often make only very token reference to the actual question. They would dutifully trot out the required information about the general area of the law in the question, but if I was a character in the question whom they were asked to advise as a result I would know a lot about the law of defamation but I would not know if my case was a strong one or not! I can see how it arises if they are presenting the security of saying things that they know are true but they are not being adventurous. It is very difficult to get people to give the kind of approach which contain the kind of qualities you recognise by giving a high class of degree. I suspect the objective of many of the people who teach is to get people through to pass". (Joint Chair of the Board of Examiners, Examiner in Law of Torts)

The above quote emphasises the attitude of those who are teaching: the CEO and Principal of a leading institution in Malaysia put it thus: “the commercial reality is that we have to take a large cross section of students, from those who would never be accepted internally to those who would get into Oxford/Cambridge but cannot for financial reasons and for other reasons are not accepted at good local state universities for their chosen subject. We have to keep the weaker students on board; the better we hope will do extra.”

Another theme stressed was ‘ownership’. As former Director and then CE in CLRI put it: *“In my CE reports I keep saying that a good answer was one where the voice of the student was apparent. Many answers seemed to be in the voice of the institution. But who are we examining? The student or the institution? Here is a tension, if our materials were so good that you could get a first without any extra tuition – and there are excellent students who simply did it themselves – then what is the institution selling?”*

One answer may be perceived expertise; many of the teachers are graduates of the LLB programme (usually from when it provided little learning resources) thus they had succeeded. By not engaging during the lectures and especially the tutorial session, the students are relying on the teachers to present them with a plethora of knowledge but they are not utilising that knowledge in a manner which would allow them ownership over the material. The frequency of rote answers in the examinations clearly evidence the lack of ownership, where the students who rely on information provided by the teacher is unable to use that information in different ways and can only present such information in the same form that was presented to them. While there is nothing inherently wrong in using the teacher dominated lecture technique as part of pedagogy, by allowing it to be the sole teaching technique (by choice or by default) leads to learners who regard the material that is being taught to them as something that exists externally in a finite quantity. The prevalence of rote answers in the examinations is evidence that students treat the knowledge that they have gained in a superficial or even suspicious manner. The lack of ability or willingness to utilise the material in different scenarios than the form in which they were presented to the student shows a lack of confidence in ownership of the knowledge. Such students are unable or afraid to manipulate the store of knowledge appropriately and to exercise the requisite personal judgement as to the type of knowledge to include or reject when answering a specific examination question, choosing instead to rely on the security of having presented all the knowledge that they have been taught.

For some writers (such as Duncan Kennedy, whose article *Legal Education and the Reproduction of Hierarchy*, 1982, is the most well-known polemic against the legal education of the elite US Law Schools) there is a formal and informal socialisation into education. Kennedy targeted the division between the doctrinal study of law as a set of rules etc and policy which was not on the agenda. But more generally some scholars have highlighted a division of labour between the teachers as possessors of the law and the students who know nothing and the role of teaching as an entry into ‘legal reasoning skills’ Klare (1982: 389) states that: “An inescapable signal is conveyed by the hidden curriculum; by the years of sitting through hierarchical classes in which the instructor guides students through doctrinal mazes toward correct answers. The message is that legal reasoning is a distinct mode of analysis that is in the possession of the legal profession and that it is the job of the law student to master. The premise

so carefully inculcated by our teaching is that this special mode of reasoning is capable from taking use from legal premise...to determinate answers, determinate solutions to particular cases, without resort to political or ethical choice. This claim about legal reasoning – that it is autonomous from political and ethical choice - is a false hood. ..To the extent that we induce out students by three years of doctrinal emphasis to believe this vision of legal reasoning, we cripple them as legal thinkers”.

Although Klare (1982) concentrated on an over emphasis on acquiring doctrinal knowledge at the expense of building intellectual skills, the same criticisms can be applied to a pedagogy based solely on looking to the teacher to provide a font of knowledge taken by the students as de facto accurate. It thus comes as no surprise that an emphasis on doctrine lends itself to the teacher dominated lecture technique, which seeks to impart maximum amounts of knowledge to maximum numbers of learners.

“A lot of the students, and I know that the examiners in London complain about this all the time, use this method I call “carpet bombing”, where they just write pages and pages in the exam, everything they know on the topic in the hopes that the relevant information is contained in those pages so they will have had written the correct information. For example, you ask them a question on the jury, whether it is outmoded and should be abolished. They see the word jury and start the answer by defining what a jury is, go on and on about eligibility, disqualification and selection, throw in some famous quotes about the jury being the bulwark of liberties and so forth, but at the end, no idea on whether it should be abolished which is what the question is asking. But they would have written lots, and the information is technically correct, but they won't be getting high marks for it. Then when the results come out, they come crying to me and saying they can't understand it because they had written so much and everything is correct and yet they have not been rewarded for it”. (Director of Studies/Lecturer - third party institution, Malaysia)

“I see a common problem in all the subjects that I mark is sort of the issue where students prepare all this stuff that they are going to write in the exam and they set in out when they see the trigger. The trigger being the key word, like if they see Parliamentary sovereignty, that's it, they will write all they know about it instead of considering which aspect of it the question is referring to or what is it about Parliamentary sovereignty they are supposed to critique or discuss. The information is correct, but it seems very strange reading in answer to the actual question because there is a disconnect with what the question actually wants”. (Examiner in Public Law, Criminal Law, Family Law and Civil and Criminal Procedure)

The pedagogy utilised by third party institutions influence the learning habits of a majority of students on the programme. Observation during a providers' conference session organised by the UOL International Academy for owners and staff of independent third party institutions all over the world showed that institutions' staff in different countries face the same problem of student passivity. The responses from the attendees at the conference showed awareness that rote recitation was a common problem in the examinations and were in agreement and support of the fact that UOL examiners have sent out messages over the years of their expectations in the examinations and that such expectations were ideal and fair of the undergraduate level student.

Visiting an institution in Ghana to conduct revision lectures organised by the UOL International Academy, I experienced a sense of déjà vu when encountering a scenario very similar to the one described by other UOL academics on their visits to the countries studied. I had envisioned dividing my 8 hour session into a combination of lectures and tutorials, where I would lecture on certain topics which had recent legislative development or proposed new legislation, and conduct tutorials for other topics, said tutorials to be based on previous examination questions. The questions for the tutorial and the relevant reading were posted to the students a month before the session in order to afford them time to prepare. However, when I arrived for the session, barely any students had done the required reading and preparation. Many students did not even print out the list of questions we were supposed to be discussing and the institution staff had to print them some copies on the spot. They were very enthusiastic at how much I was going to be able to cover with them over the 8 hours, the more the better being the general view. I did try to generate some discussion during the tutorials, and was rather bemused to discover that while there was some response and discussion from about 4 students from a group of about 16, these students were subject to annoyed looks and hisses to keep quiet from the others who viewed them as wasting precious teaching time. It seemed to me that the majority of the students took the view that the opinions of their classmates had no weight or would not benefit their learning and as such had no place in the classroom as it detracted from the information that they had come to receive from the lecturer.

The principal of the independent third party institution in Ghana shared much the same views during informal conversation as his counterparts in the countries studied. Citing student passivity, to the point of apathy at times and the over reliance on the teacher as the main problems with Ghanaian students. According to his experience, the students did little or no independent work or research and expected the teacher to provide them with all relevant information. Even if the relevant information was available on online resources which they had access to, they expected the teacher to print and distribute copies to them. The prevailing expectation and attitude from the majority of students were that the role of the institution and the teaching staff was to tell them what to learn and to provide them with the relevant material where it is contained and they will learn it.

6.4 Possible Reasons for Passivity

What are possible reasons for the prevalence of the passive, teacher dominated lecture technique?

One possible reason identified was in the inherent culture towards learning prevalent in the countries studied. Research data shows that the models of primary and secondary education in the countries studied in the research are firmly based on the traditional models of primary and secondary education used in the United Kingdom until fairly recently. Such models are based upon 10 years of basic education leading up to 2 major qualifications; a secondary school completion qualification (equivalent to the GCE O Levels) and a further 2 years of post secondary/pre tertiary education leading up to an advanced school leaving qualification (equivalent to GCSE A Levels). In fact, in Singapore and Bangladesh, students wishing to pursue undergraduate degrees instead of vocational qualifications sit for the Cambridge A Level examinations. While

the O and A level examinations have undergone curriculum and assessment changes in the UK in recent years to include course work and projects, the models of assessment for these pre tertiary qualifications used in the designated research countries are set in students sitting for a final summative unseen written examination in the subjects that they are reading for. This model of education assessment has led to pre tertiary education objectives in these countries to be geared towards teaching and learning to pass the assessment. The goal of the students (and their parents) is to seek to pass the qualifying assessments with the highest mark possible and to do so was taken as an indication of achievement. This has led teachers to design their teaching framework and objectives towards guiding students to effective means of passing the assessment.

One method, as recounted by numerous students in different countries interviewed during the research, would be for the teachers to provide as much substantive knowledge in the subjects as possible to the students and require the students to learn as much of the material as possible. Frequently, the sheer volume of substantive material provided to the students meant that in order to “study” the material they had to resort to rote learning and recitation of facts. Another favoured teaching method involved gearing students up for assessment as early as possible. Research and data and personal experience has proven that students in a major examination year are provided with copies of previous years’ examination papers and are expected to complete these papers, often under replicated examination conditions, as part of examination preparation practice. The problem here is that this often occurs early in the course when the students cannot be expected to have assimilated or taken control of the material themselves. Consequently, weak answers de-motivate them and effectively make them feel powerless and in the hands of the tutors who then propose how they should answer such a question (as shown by interview data later UOL examiners often comment that answers can be grouped according to the institution the candidate has come from and bear the mark of the tutor rather than the students themselves). Teachers draw up charts highlighting the frequency of appearance of certain types of questions in the examinations and prepare the students accordingly on what they perceive is the best way to tackle these questions should they show up again during the actual examination.

It should be noted that this practice has roots in the pre tertiary education system in Singapore, Malaysia and Bangladesh, private organisations compile collections of the previous decade’s examination papers, popularly known as ten year series, published as workbooks for students to use as practice. Such publications are extremely popular teaching and learning materials, based on the belief that the ability to work through a decade’s worth of examination questions will amply prepare a student for any type of question on the day of actual examination, as well as the belief that examination questions and tasks are designed in a number of finite ways which can be mastered through the exhaustion of previous examinations.

This culture of teaching and learning in turn inform the expectations of the students when they proceed on to tertiary education. The students are prepared to learn a vast amount of material and their willingness on this note is certainly not passive. However, they have not been conditioned to actively seek out and make decisions on what constitutes relevant material to study. Having been previously convinced that it is possible to perform well in assessment simply by absorbing a vast amount of material,

they are not confident in making choices to decide which material to focus on and what to leave out, and as such find themselves overwhelmed and unable to cope. Research data show that students understand that rote learning is not encouraged or expected by the UOL, but is frequently resorted to in desperation when the students are confronted with too much material.

"This issue of memorization I think is misunderstood...by the students and by UOL. The examiners say that it is bad to memorise the answers and that every year they see students who put prepared answers in the exam. I certainly don't encourage that sort of thing at [XXX institution], but I won't tell my students that it's bad to memorise or that they don't have to memorise at all. There are certain things that you do have to remember and they (the students) have to put in that effort to commit those things in their heads. They have to remember certain key cases, the names of the cases, some facts; they have to remember some key dates, like the 1966 Practice Statement, the year of the Magna Carta, or some quotes from judges. I tell them that they have to remember certain important statutes as well because they should not be wasting time in the exam trying to page through the statute book. This sort of things, the students have to put in the work. But then some students misunderstand and they think that they have to memorise everything that it is possible for them to memorise a whole chapter of the textbook or the whole textbook even and that's when they run into problems. Then, they don't have time to actually spend on reading into things and trying to understand and put things into context. Then, you see them getting frustrated because they feel that they are spending so much time and effort but yet they still don't really understand the subject, so they feel that they are not doing enough and then they try to read some more and memorise some more and it gets them nowhere. And...and it's one thing if they actually try to memorise the textbook or actual cases, but you have students who try to read and memorise all they can, not only the textbooks, but the notes, then they get prepared notes from their private tutors and they get used notes from senior students, all the nutshell books and model answer books" (Principal/Lecturer- third party institution, Bangladesh)

"Some would say that it's unethical, which I guess it's true in a way, but there are some students that need to resort to rote learning. Because the entry requirements for the degree are fairly low and now you do have the diploma students who may not even have done the A levels, we do at times get students who are not prepared or how shall I say this, not really able to cope with the demands of a law degree, so they are looking to get through the examinations in any way possible. Some of them come straight out and tell you that they just want to get the degree and get the paper qualification, so for them this is the easiest and most straightforward way possible. Give them the material and tell them what to learn and they will learn it. Now, to them they may think it is easy but the way I look at it, I think trying to memorise chunks and loads of things without understanding is actually very difficult. But I think it's because it's what they are used to from school days so they are comforted by the familiar method and maybe they think that since it's gotten them this far, there might be something to the technique". (Lecturer- third party institution, Singapore)

"Basically what happens I've noticed is that there are some students who want a lot of stuff. They just feel more confident and secure if they have as much stuff as possible and as much of the teachers' time as possible. They are always asking the teachers for extra lessons or to see them privately and they even go to private tutors outside of

school hours. So they have the London books which they have been given, then they have the notes from the school and then they have their private tutors' notes and they feel that if they can read and remember all of that they will do very well in the exams. And I know a few of my classmates who have done that and they have done ok so far, so other students see that and they think that if that student can memorise and do alright then so can I". (Third year student – Bangladesh)

The culture of placing total trust in the teacher is also very prevalent theme in the research data. It is however, unclear whether the prevalence of teacher dominant style of teaching and learning is the cause or the result of student passivity. Research data from teachers in third party institutions indicate that the teachers favour the passive student lecture style approach, partially due to large student numbers but mainly due to pressure from students' expectations and the refusal of students to participate actively in discussions or to take the lead to direct their own learning. However, data from interviews with students indicate that while some of them do have willingness to involve themselves more actively in student led learning; they see no reason or opportunity to upset the existing teaching method and culture. Some data indicate that students subscribe to cultural values that respect the authority of the teacher and thus they feel uncomfortable speaking up in class or posing questions which may be interpreted as a challenge to the recognised wisdom of the instructor.

"For me, I think I made the decision to choose [XXX institution] when I decided to do this degree through recommendations. This school has a very good reputation in Malaysia for the UOL law degree and I have relatives who have done the degree with them and they have done very well. So I know before joining that the teachers here are very experienced and reputable and they know their stuff well. So I have confidence when I go to their class, that they will be able to deliver the subject matter in a way that I will understand and to gear me towards the important areas for the exams. So I don't really question them, I may ask some questions to clarify certain issues after class, but I don't really pose questions or discussion in class. I am trying to understand what they are teaching". (Second year student – Malaysia)

"I said earlier that I don't expect the teachers to spoon feed or hand hold us through the degree. But if they were to do so, I wouldn't really complain either. I think it's really a matter of perception at the end of the day. I do expect the lecturers to try to simplify certain concepts for us. I think students learn better with a structure, I know I do. So instead of just jumping into the deep end and frightening us with all the complicated and abstract concepts, I do expect a good lecturer to be able to simplify and say alright, this is what the topic is about, here are some basic definitions, and this part causes controversy or there some argument about this part and here's what's been said about it and this is what's been decided. So at least with that basic structure when I am making my notes, I am able to see a start and a beginning to a topic or an issue and this helps me to study. So if a lecturer draws charts, graphs or notes to simplify things for us, does this mean that she is spoon-feeding us or that we are not required to be active in putting in our own work?" (First year student – Singapore)

"I agree, I think the most important thing for a good lecturer to do is to be able to make things interesting. I know most students just want the lecturer to give them all the necessary information, but for me just giving information is not enough because if they do not present it in an interesting manner or relate it to things we understand, then the students are just not going to get it anyway and even worse, they may end up disliking

the subject. When a lecturer is able to that and keep the interest in a subject, I think that's quite a skill and it's not just spoon-feeding or simply telling us information. So once there is an interest, that's when the students will start to become active or they will be prompted to ask questions". (First year student – Singapore)

"I think it's quite conflicting actually. Lecturers say that we should be more active in class and that we should participate more or speak up more, but when you do it's not always appreciated. I mean, take [XXX lecturer], I think some of the other students have also complained about this, he just reads information of the PowerPoint slides, what's the point of that, we can read the slides for ourselves, it's the explanation that we want. So when some of the students try to ask questions to try to get him to go deeper into certain issues, he just brushes us off by saying that's not important or not relevant. Obviously, if the question has occurred to us and we are not getting the answer from what you are reading out, or it's not clear from what you are reading out then surely it's important or relevant and should be discussed more? You just get the impression that he doesn't really want to be bothered with answering any questions, maybe because he doesn't really know his stuff or whatever the reason is. It got to the point where quite a number of the students were skipping his classes because we were just not getting any benefit from it.

Then, sometimes you get lecturers who are very willing to answer questions and you can see that they like it and they really want to discuss further with you. But then the other students get impatient, you can sense it and they start sighing and giving nasty looks and they make you feel like you are wasting time. I do understand that most of the students are part time students here and they have work and all that, so they really rely on classroom time and they don't want people to waste time on irrelevant questions, but it's not always irrelevant. Some students were quite vocal when the classes first started then after a while they quietened down, I guess because they didn't want the others to get angry with them". (Second year student – Singapore)

"I must say I wasn't totally impressed when I observed some of the local teaching at the institutions. Absolutely facts, full of facts; fifty cases for a lecture, just some guy dictating cases to a class. I felt sorry for the class. It played upon I think a culture of teaching practices of I'm the master, you're the tutored. I think they played that up and I think they found me odd because I believe in discussing and asking things generally. It wasn't too bad in Malaysia, I think people were a little more easy going there, but in some places it was really quite unpleasant. The students were not prepared to speak or contribute and they felt that you were there to give them something to the maximum. If they're bored they walk out. They get annoyed unless you tell them fact after fact".

Interviewer Response: they felt that they had paid for a product?

"Paid for a product, exactly, pure - what do you call it, what did Marx call it? Commoditisation, that's right and then they wanted it delivered just the way they wanted it .I always remember some person in the class was saying- let me get this absolutely straight because this might - I'm jumping a bit, I think this might have been as late as 2000. I taught some particular kind of way. It was I think - on the notion of evidence, that's right, on the idea of similar fact evidence and how each case had to be approached with the same principle, whatever. I said, every time you do this don't just think that the case applies to the - discuss it in this kind of way. The guy was saying, no what you've got to do is you've got to just put down the cases. I said, no, the UOL is

entirely different from that. It's not a knowledge test, you've got to think your way round how the cases you have that don't quite apply to your problem might be understood to apply to the problem. You've got to extrapolate from the cases.

He was bloody rude to me. I was thinking - he didn't know it and I wasn't allowed to tell him, I was the chief examiner of XY at the time. I actually knew that there was a question coming up in the exam that was on this exact point. My team of markers - and we had quite a few, we would be seven or eight - all absolutely agreed with me that this was the academic subject, this was the way it should be done. I think this guy is telling me how the examiner would want it answered. It's that kind of gulf that I could never get over. But I do think that some students are quite amenable and if you explain things, you can get them to come around. It was just a matter of telling them. You tell them, this is not the way you get a good result, this is the way you get it, by speculating, by thinking round the topic. The examiners all think this and we're all University of London and we think of the law degree as an academic degree not a training degree. Some of the students would really respond. It was just a matter of telling them.” (Former CE in Jurisprudence and Evidence, former acting CE in Criminal Law)

The anecdote recounted in the final interview quote extracted from the data reveals a pattern, also indicated from the previous two quotations, which can go towards rebutting the view that, by and large, students in institutions are generally passive when it comes to their learning and receive teaching without overt response and reaction. The pattern suggests that students do have a willingness to speak up and participate actively, or to indicate their dissatisfaction with the direction of the class, or the way in which the knowledge is disseminated to them if they feel that they are not receiving any benefit in their learning or understanding of the subject matter. Such perception on the part of the students, as evidenced in the anecdotal recount from the Former CE in Jurisprudence, may not always be entirely accurate or can come about from a lack of understanding, or clash about the objectives of the lesson which the teacher is trying to achieve, but it remains that students do tend to be vocal when they encounter what they regard to be poor teaching.

This finding drawn from the data is supported by findings further analysed in the chapter on Assessment and Grading, where teachers in institutions recount their difficulty in effectively preparing students for an examination in which they have no control over designing the assessment objectives and tasks and do not have direct and specific information as what are the precise expectations of the assessor. Indeed, the assessors/examiners are also revealed to sometimes having varying expectations and interpretations of the assessment outcomes and standards. As such, the teachers in the third party institutions are reluctant to deviate from what they have come to regard as a “safe” pedagogy, one that has its merits validated by previous positive results. The lecture style teaching methodology with the goal of imparting vast volumes of knowledge has been implicitly accepted in the institutions by the staff, and this implicit understanding is strengthened when new teaching staff is largely drawn from the ranks of previous students who have not been exposed to a different methodology. Thus, students have come to accept or even expect this particular teaching methodology as a norm or even to regard it as a superior standard. This seems to have led to a unique “chicken and egg: which preceded the other?” type of situation where the teachers in the institutions are not willing to push themselves to experiment with

alternative teaching and learning theories and to refine or change their teaching methodology, citing commercial pressure from students who are resistant to change or what they perceive as a drop in teaching standards, and on the other hand, the students who state that they are actually open to the idea of alternative methods of teaching and learning but because they have not been exposed to them for an effective period of time to be able to see positive effects, or that such methods have not been utilised by the teachers in an institutionalised and coherent manner, such sporadic attempts at trying to teach using alternative methods such as conducting mini- moot sessions, roundtable discussion, case study analysis etc comes across as ill planned and thus perceived to be bad teaching.

In Bangladesh, interview data has indicated that some students remain passive during class and are also unable to take control of their learning due to a deficiency in the mastery of the English language. In such instances, the students are intimidated by the material they are presented with and resort to memorisation and recitation. They are unwilling or perhaps unable to engage in active participation during classroom session as they face difficulty in articulating their opinions or questions and may refuse to risk embarrassment by exposing what they perceive to be ignorance in front of their classmates.

“The difference here is that some of my classmates are from the Bangla medium schools. As we have High School here, either in English Medium or Bangla Medium. The Bangla Medium students are not familiar with the English Language, and they are usually taking English classes on the side or ILETS. So they do have that difficulty when they are trying to study and to understand and it can be frustrating because they may have to look up the meaning of the word or ask someone. Things can take a lot longer. I did have some group and study sessions where some of the classmates were from Bangla Medium schools and they spend a lot of time on constructing their sentences to make sure things are grammatically perfect and precise spelling and all that”. (Third year student – Bangladesh)

“At some point I do understand the difficulty and why some students are always chasing after model answers or prepared answers and largely, but not all of them, but a lot are usually students from the Bangla medium. London insists on ILETS, especially for the Diploma students, but having ILETS means that you have some general knowledge of the language and you can survive day to day in an English speaking country, but that does not mean that writing law essays or understanding deep judgements become easy...They get tempted to memorise model answers or try to actually study the law from model answers because it is easier than reading the textbook and the cases. Or they try to memorise full passages from the text or paragraphs from judgements because they think that this shows that they have a lot of knowledge. I lost my temper with two students the other day because their assignments were nothing but reciting the whole facts and judgements of the cases. It was like reading the All England reports, nothing to do with the actual question to solve. I had to tell them this does not work. I used the example of religious study and said: ‘Listen, even if you memorise the whole Koran, front to back by heart, it does not mean you are a good Muslim if you do not understand what you have read, if it doesn’t sink in. It’s better to learn some parts and spend the time to really understand it and be able to practice it in your life, so the same with law’. I don’t know if they get the point. It’s not easy for them, this degree is very important so you do try to help them. Some students

realise it and they slow down or take a different route and switch to do less subjects a year, but a lot of students want to get it as fast as possible so they look for shortcuts". (Principal/Lecturer - third party institution, Bangladesh)

Another possible reason which may have influenced the students' insistence towards preference of passive learning could be their inability to recognise the value of developing and honing independent learning skills. As discussed previously, the pre tertiary education in the countries studied in the research show a strong propensity to groom young learners towards preparing for an examination instead of developing transferable learning skills and the subliminal message that it is possible for a subject to contain a finite amount of knowledge, which if learnt in entirety is sufficient to prepare one for assessment. Furthermore, research data indicates that the UOL qualification is very highly recognised in the countries studied. Obtaining the UOL LLB opens many doors in those countries and put the award holder in very good stead when it comes to pursuing a career in the legal profession.

"Basically when I wanted to do law there was a choice between [the local] University, which is the local provider, and this external degree. Naturally when I wanted to apply for the degree, I had wanted to apply for jobs later UNICEF, WHO or other Non Governmental Organisation. My goal is to work in one of those organisations, so I knew that a UOL degree would help me to get a better [Masters] school because it is recognized. Even though it is external, it's like the reputation is similar to the internal degree which they get there. So I knew this would elevate me from the rest of the people who are actually doing the local law in [local] University." (Third year student – Bangladesh)

"The UOL degree is still very highly regarded here and the chambers when they look for lawyers are more willing to take on students with English law degrees and the UOL one is still the most recognised. Most of the top lawyers in the big chambers here were formerly UOL students, either external or internal, so they know the standard and that it is a very difficult degree to get. Also, I think, maybe you have noticed that achieving the title of Barrister is very respected in Bangladesh. So for a lot of students, it's not just about being a lawyer, but about being a Barrister, being called to the English Bar and attending at the Inns and so forth. So to do that, they need to get a law degree which is recognised in England that will allow them to do the BPTC and get called to the Bar. So for the students that cannot afford or don't want to go to England for that many years, this is a very good alternative. But I think there is some competition now because [XXX] University is also having an external degree and that is gaining some popularity here in Bangladesh. But the traditional one that is regarded by all as being good is the UOL degree. Even people who are not in the law business know of it". (Lecturer- third party institution, Bangladesh)

"I wanted to do a law degree, and my parents wanted me to do a law degree, so I was geared towards that from a young age. As to why I chose the UOL, it was because of the international reputation it has. My Dad is a lawyer and a few of my uncles and aunts are too, and they are confident of the standard of the UOL and they know the reputation that UOL enjoys in the legal society here. The firms prefer lawyers who have a foreign degree, especially if it is from a very highly regarded university. In fact, all those who are lawyers in my family have English law degrees, except my cousin who did hers in Australia" (Second year student – Malaysia)

"Yes, as he [other interviewee] said, it's about the recognition of the UOL and the reputation in Malaysia, but it's not just that alone. In the long term it is better to have a degree that is internationally recognised. Our local degree may not be accepted in other countries, but a UOL degree is accepted in many countries worldwide, so in the future, if I decide to migrate then the degree can still be recognised in another country". (Third year student – Malaysia)

"Well, for me I was working as a legal, sort of assistant, I worked my way up as a general secretary in a law firm and I started doing more specialised stuff and my boss suggested that I do a law degree and aim for practice. I thought it was a good idea and I had more time now that my kids are all in school and that. So I started looking for a course, and of course it had to be something I could do while working and this UOL course kept coming up when I was looking around, online and asking people and that. So I did some research into the UOL and I was very impressed by their standard and their history, or pedigree shall I say? It seemed to present a lot of opportunities, not only in Jamaica but also in America because you can take the New York Bar with it, so that was an idea as well because I do also have US citizenship, so if I decide to move over there, it would be something to do. I don't think it's likely as I am quite settled in Jamaica and my job and all, but it's nice to have the option. I think I felt reassured to sign up for the course as these days you do have a lot of scam degrees." (Second year student – Jamaica)

This data indicates that students regard the qualification that they are reading for as a prize to be earned at the end of their study and that the mere fact of the qualification is what will adequately prepare them for a successful career in the legal profession. Perhaps, it is not unfair to state that they are not aware of or fail to appropriately appreciate the more ideological aspects of education in general and legal education in particular. It is because the qualification is regarded as the ends and thus, students may take the approach of trying to find the most effective means of reaching the ends and in simplistic fashion regard the means with the least effort on their parts as effective, especially if previous experience and evidence has confirmed it. This is strengthened by the fact that students interviewed stated that they had usually chosen to attend their particular institution through word of mouth from former satisfied students who have successfully obtained their LLB qualification or because they were convinced when presented with the pass and honours statistics presented by the institutions.

However, it is certainly difficult to fault the students and perhaps in part, the independent third party institutions for subscribing to a simplistic view of the goals of legal education when there does not seem to be clear agreement on what those goals constitute and what are the appropriate pedagogical tool to reach those goals. In the context of the UOL ULP, this problem is compounded by the fact that such objectives and goals may have to be tailored to be relevant and practical for the students and the institutions operating in very unique local circumstances.

Gower (1950) pondered the question of whether reading for law and obtaining a university qualification was the best basis for subsequent entry into the profession and stated that the question can only be answered if there is consensus on the content of the law and the method by which it is going to be taught in the universities. The difficulty is in identifying such clear consensus, although literature does show that a common thread can be discerned.

The Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) IN 1996 reiterated the Ormrod Committee's View that law should be a graduate profession and strengthened the recognition that universities have "a clear and crucial role in providing the intellectual foundations for intending lawyers" (ACLEC, 1996:23). The Advisory Committee went on to state: "The strengths which we see in current law degree courses are that they provide a firm basis for pluralism, variety, flexibility and diversity, as well as intellectual rigour through the teaching of core and contextual knowledge. The serious structural *weaknesses* of the present arrangements are the following: 1. the artificially rigid division between the academic and professional stages of legal education; and 2. the perception by some of the academic stage as a preparation primarily for vocational training as a barrister or solicitor. Legal education and training are not treated as a continuum. The rigid division between the stages has had a number of adverse consequences"(ACLEC, 1996:22-24). These statements set the stage for them to set out their views on the appropriate goals of university legal education in light of the (then) current weaknesses.

The ACLEC (1996: 51-52) spelled out the general aims of university legal education as being one that will allow the students to emerge with not only core knowledge, but also a deep understanding of the subject matter and the ability to relate the acquired knowledge across subject areas. In addition to core knowledge, university legal education should also allow students to acquire contextual knowledge and the ability to place and relate legal doctrine in the wider spheres of the political, economic, social, philosophical, cultural and moral contexts. Finally, university legal education should also inculcate students with the appropriate legal values of commitment to rule of law, justice and fairness and also impart a set of essential intellectual skills, such as the ability to identify critical areas of dispute and discussion, the ability to construct logical argument and to present such argument in a clear and compelling fashion. The aims of legal education in the 1996 report of the ACLEC echoed views that had been slowly emerging for the past 5 decades.

Gower (1950) had put forth the view of the need for university education to impart a range of skills that go beyond the acquisition of knowledge of legal rules and the application of them to specific cases and to situate legal education against the wider background of the general social sciences instead of treating it as a specialist professional subject. The Report of the Committee on Legal Education in Developing Countries (1975:62) stressed that skills development was becoming a subject of increasing interest in legal education in areas such as "problem analysis, oral and written communication; counselling, advocacy and negotiation; the methodologies of legal reasoning and legal research". Robinson (1981:54) also identifies a pattern in the general movement of trends in legal education beginning in the late 1970s, stating: "The desire to remove the teaching of law from a climate of intellectual isolation seems implicit in both curriculum developments and clinical experiments: the rejection is of a division between "academic" and "practical" orientation in favour of an approach which deploys as wide a range of knowledge and skills as possible. Twining (1997) lends impassioned support for the development and implementation of skills training as a core component in undergraduate and legal education and lends further clarification to the definition of the appropriate skills to be imparted and acquired. Twining (1997) defines such skills as those that may not necessarily be required for successful practice in the profession, but rather skills which are essential for any law student

regardless of their intentions towards joining the profession, such skills being those that will allow develop and strengthen the mental rigour of the student and will prove of practical utility not only in understanding the law but in any enterprise further in life.

These trends in the reform of undergraduate legal education have informed the changing expectation of the UOL and are consequently illustrated in the assessment tasks set in the examination as discussed in the chapter on Assessment and Grading. It has also prompted a growing recognition that the teaching methods employed in the independent third party institutions may not be sufficient, in itself, to adequately prepare the students for an examination geared towards meeting the prevailing aims of undergraduate legal education. Alternatively, it is also possible to wonder if students reading for the degree and who seek tuition support from a third party institution have come to expect what they perceive to be a teaching and learning strategy, which the institutions provide due to commercial pressure, such strategy being somewhat incompatible with the goals of undergraduate legal education.

The strong preference for the teacher dominated, passive learner lecture teaching technique has been described above and through the research data some reasons for its prevalence have been identified. There is also acceptance among teaching and learning theorists that sole reliance on lectures with a focus on doctrine is out of date and inconsistent with the current aims of ideal legal education. However, this brings about a need to question whether alternative appropriate pedagogy has been identified by the UOL and effectively communicated in terms of expectations to the independent third party institutions and if so, whether such pedagogy can feasibly be adopted by them.

Consider the UOL International ULP Self Evaluation Document (SED) 2012, “Within the learning design model that is being implemented, the elements that direct the flow of learning are underpinned by an active learning pedagogy. The learning and teaching approach is driven by activities and support technologies that promote both student engagement with the materials and interaction amongst the learners, in this way developing and reinforcing the development, acquisition and application of knowledge”. The SED (2012:56) also makes reference to the need to adopt a best strategy of integrating the independent third party institutions into a blended learning environment in order to maximise resources and minimise potential clashes of teaching cultures and expectations. To these ends, the SED (2012) outlines ongoing and future plans to develop, redesign and create appropriate learning materials and resources to support active student learning in order to achieve the goals of ideal legal education and this teaching and learning philosophy is also being shared with the independent third party institutions through a series of Providers’ Conferences, teaching workshops and seminars and institution visits. There are also plans to revive a scheme of Teacher Accreditation and currently, staff of independent third party institutions have dedicated space on the Virtual Learning Environment Portal where the UOL can “promote teaching enhancements via tutor support activities and provide opportunities for networking and sharing of good practices, and as such a space for a ‘CoP’.

The UOL, however, stops short of actually prescribing specific teaching techniques. There could be some reasons for this. For one, it may seem paternalistic to prescribe exact methods in light of the fact that the UOL does acknowledge that the independent

third party institutions are best placed in terms of knowledge of local student needs and expectations and the conditions of the local learning environment. Furthermore, as the Director of the ULP has recognised, third party institutions differ in terms of resources and facilities, although they all have to meet a minimum quality threshold for accreditation and as such, exact prescription may cause undue hardship in some areas and reduce the overall standard of student support. Lastly, the six UOL colleges which form the Laws Consortium operate independently in terms of devising their own teaching and learning strategies and techniques and the academics working in those institutions enjoy a certain amount of freedom in designing their course instruction framework. It would be artificial to attempt to prescribe a standard teaching technique to represent the expectations and practices of the UOL International ULP.

6.5 Considering Alternatives

It must be noted at this point, that although the analysis for most of the chapter thus far has centred on the notion that an emphasis on pure doctrinal knowledge and the consequent teacher dominant lecture teaching technique is outdated in light of the current objectives and expectations of ideal legal education, it is not an attempt to discredit the technique, nor to suggest that the skills and lived experience of the teachers in the third party institutions or the students who have attended at them, are in any way inferior. However, it does lead to the consideration of other possible appropriate teaching and learning techniques, and the possibility of whether they may be used in place or in conjunction with the current prevailing technique in context of the current environment.

With the objective of student active learning in mind, one technique to consider is the self – solving method or the Socratic method (although Rutter, 1968, argues that Socratic exchanges were a literary device used to highlight the intellectual superiority of the teacher and to expose the ignorance of the disciple, thus reinforcing the notion that the teachers holds a font of greater wisdom to be respected and tapped, instead of allowing the disciple to take control by developing his own reasoning). The self – solving teaching technique would require the teacher to design the class around a series of questions, through which student answers would lead them to think and resolve and ultimately reach a reasoned opinion, if not a conclusion. This technique is highly dependent on student participation and the ability of the teacher to devise an appropriate set of questions that would enable the student to exercise critical thinking and analysis and act as a springboard to further logical questions or opinions to be discussed.

This technique has been attempted, albeit in rudimentary and perhaps amateur fashion in some of the third party institutions and as has been described through previous data in this chapter has not met with much success on the parts of both teacher and students. The self- solving teaching technique cannot and should not be utilised in an ad hoc manner. Despite its air of spontaneity and an element of the unexpected in the directions the answers to the questions will take, in order to truly challenge and help students develop their critical thinking and analysis through independent thought process, it takes a sizable amount of pre lesson preparation to devise a question framework and skill on the part of the teacher to lead a discussion back on track from

deviation. Such technique would possibly require teachers to attend specialised training or increase their preparation time, which may be difficult in institutions where the members of staff are also in practice. Another practical difficulty in trying to incorporate this technique in third party institutions lie in the fact that even if teaching staff are willing to do so, they may not have access or the institutions may not have the resources to institute the type of specialised teacher training to help them develop this technique appropriately.

Another practical difficulty in trying to incorporate the self- solving technique is that its efficacy is highly dependent on student participation. As Identified in the Report of the Committee on Legal Education in Developing Countries (1975:64), “the so called Socratic Method, requires that a high degree of anxiety be created in students in order to provide the necessary goading to force participation or thinking for oneself. This may result in some students becoming alienated from the enterprise, thus, in some settings active methods may, in fact, be dysfunctional unless students are prepared and motivated for the change”. It may indeed, be difficult for the third party institutions to induce a level of anxiety to encourage student participation when they do not have direct control over the assessment process and when the students are in effect, their customers.

“Maybe the relationship [between UOL and the institution] needs to be a little bit more symbolic in the sense that both of us would actually have a role in the final result, although as I have always suggested, not in the sense to have a hand in the setting or assessment of the papers because that would undermine the nature of the programme itself. What I actually am suggesting is of course for the institution to have a role when it comes to borderline situations, where our input is taken into account...like whether the person is a borderline 2:1, or 2:2. Because once the institution’s input is taken into account and that is communicated to the students, especially full time students, then a lot of things can actually be implemented. Now we are viewed largely as a tuition provider, a three party relationship; as far as the students are concerned our role is purely to give tuition support. So if they view us like that, to insist that we have to do things like trying to inculcate skills or student activity in class, it becomes a virtual impossibility to get the students to attend these training classes. The student says is that going to come out in the exam, why are you asking these questions? They look at things from a very narrow approach. So that’s why the only way, I feel, we can do this is maybe to come to a compromise to allow the institution to have some input and therefore authority to legitimise ourselves to the student and the compromise is justifiable to achieve a change in student attitude”. (Senior Manager/Lecturer- Third Party Institution, Malaysia)

Finally, bearing in mind that the average class size in the institutions studied are far larger than the class size of the average tutorial or seminar session in a traditional university setting (at least in the countries selected for the research), it is almost impossible to have any form of meaningful student participation due to time constraints and perhaps, significant variances in student ability and participation. Following Rutter (1968:28):“With respect to student participation, the ‘self – solving’ discussion often sinks into nonsensical twaddle. While even this is part of the learning process, how far it is permitted to continue involves the process of continuous variation, as the teacher shifts the level of discussion to the top, middle and bottom of the class. But a class

hour in a professional school should not be permitted to deteriorate into a pre-kindergarten exercise for the verbally retarded. No acceptable Socratic variation can justify such dereliction of teacher responsibility and abuse of rights of other students. It is this sort of thing that contributes to criticisms of the Socratic Method as unduly time consuming”.

Aside from practical barriers which pose a difficulty for institutions considering the adoption or incorporation of this technique, Rutter (1968) warns against over reliance on the self- solving method, especially for beginner students or students who are not the “reincarnation of Coke or Mansfield”, as they do not possess the fundamentals in terms of knowledge in order to engage in the form of logical and critical thinking that the technique requires. For legal education geared towards the masses, in accordance with the access ethos of the UOL, Rutter (1968:29) states that: “For the usual range of students, let us remember that legal problem-solving is not a mere matter of uninformed logic and facile application of natural ingenuity. There is indeed a logic underlying the judicial process, but this must be sought in a thicket of artificial constructs, stylized patterns of judicial thinking and expression, and highly complex concepts that are the resultants of historical developments whose ‘logic’ is often undetectable. Here is where the “concept-vessels” described above play a crucial role. Especially in areas foreign to the judge (and certainly the student), the selection of what is ‘material’, what it all depends on, would be groping in chaos without the guidance of the rules of law embodying these concepts...This is where ‘legal thinking’ becomes informational...this is the kind of ‘informational data’ that the law student must learn before he can arrive at self-solving...”.

Another possible teaching technique is the Problem Method summarised by Ogden (1984:655) as thus: “The student is expected to focus his study on a problem or problems posed in advance of the class. His task is to wrestle with each problem drawing on whatever material may have been assigned to be studied in connection with it. The method has three parts to it: 1) assignment of problem statements for solution; 2) use of course or other materials to solve problems; and 3) discussion of solutions in class”. This method is very widely used in many universities, where students are given tutorial worksheets with the assigned problems in advance, the tutorial sessions are then used to discuss the solutions that the students have prepared and any resulting issues that may have arisen in the course of their preparations. The Problem Method is considered a form of active learning as it requires the students to find their own answers through discovering and making use of appropriate resources. It will require them to exercise their own judgement and consideration in deciding which sources to utilise and the best manner in which to utilise them and arrange the information gleaned from the resources in a manner that best presents a solution to the problem. It requires the students to be proactive instead of reactive. Following Ogden(1984), the problem method is very effective in achieving the goals of ideal legal education as it not only requires students to familiarise themselves with primary sources of law, thus gaining substantive knowledge, but it also hones their critical thinking skills in analysing issues, recognising problems and devising solution strategies. By making students “do” the problem assigned, it also helps them develop the desired legal skills of research planning, legal writing and effective communication through various media. Further, by exposing students to practical problems, it makes

the subject matter far more relatable to them as opposed to studying abstract doctrine from a distance.

This method to a certain extent has been implemented by the UOL in the syllabus through course design of various subjects as evidenced by the subject guides and in the assessment tasks set. The subject of (CLRI) Common Law Reasoning and Institutions (a compulsory subject) requires students to answer a compulsory legal research question in the examination for which they can only be adequately prepared to answer by having completed the legal research tasks assigned to them. The students are required to do a series of legal research exercises on the VLE as well as to write and upload a legal research essay (being given a choice of 6 questions). In the examination, the compulsory question requires them to answer a series of short questions on basic legal research knowledge and will also require them to write a reflective and considered account of the methodology used in researching and writing the legal essay. As such, the compulsory question forces the students into action of carrying out legal research in order to complete an assigned task, although the questions set are in the fashion of answering simple statements rather than resolving a legal problem. Further, students who wish to achieve a QLD would also have to pass a required skills component, which entails the submission of a skills portfolio reflecting their mastery, through collated evidence, of the set required legal skills as determined by the JASB.

The incorporation of the skills agenda by the UOL in order to ensure that the LLB degree meets the JASB requirements for a QLD has forced the independent third party institutions to ensure that they incorporate aspects of the problem method into their teaching methodology. In order to adequately prepare the students to sit for the CLRI examinations and to prepare a suitable skills portfolio in order to obtain a QLD, the institutions have to ensure that their students are instructed in basic legal research skills, trained in aspects of legal writing and are given opportunity to conduct the research tasks.

This would seem to give the institutions fertile ground to implement the problem method into their teaching techniques to complement the conditions created by the UOL. Research data shows that the teaching staff in the institutions welcome the requirement of skills testing in the programme as it effectively forces students into doing activity to master the skills, it also lends legitimacy to the institutions when they exhort students to take an active approach to their learning instead of passively absorbing information delivered to them through lectures.

"I definitely think the skills thing that London is doing now is an excellent idea. We have been hearing from [Former Director of the ULP] for a few years now how London is sick of students for give set formula answers to exam questions and who do not seem to show in depth understanding of the subject. The only way to get through that is for students to actually read cases, read articles from journals like Cambridge Law Journal. But the students will say to us, oh if you find a suitable article or case, just print it for us and we will read it. That should not be the way, so if they are forced to do these things to demonstrate their skills in the exam, when we tell them that law is not just reading chunks of the text and lecture notes, but about reading selectively and being

able to apply the information, they know that it is not merely a suggestion but a requirement now". (Director of Studies/Lecturer-Third Party Institution, Malaysia)

"There was a lot of anxiety at first, because students are always anxious when exam format changes or new requirements are introduced. Especially the batch of students who will be the first batch to experience the new format, they sort of feel that they are the guinea pig and that there is no precedent for what to expect and what the standards are, so in a sense they have no model answer to get them through this part of the exam. But when London came out to explain what the legal research was about, they helped a lot and I think the students, despite their anxiety found it quite interesting. I think for the younger students it is quite a novelty because now they have a sense of purpose and a project to work on and something to discuss about with their classmates". (Principal/Lecturer- third party institution, Bangladesh)

Despite drawing on aspects of the problem method in order to aid teaching and learning under the skills requirement as imposed by UOL, it would seem that old habits die hard. In order to aid student understanding of what would be expected of them in answering the compulsory legal research question in CLRI, UOL had prepared a sample statement of reflection of methodology as an example of how to describe the research process. This statement was drafted by me and published by the UOL and distributed to students who are doing the subject of CLRI. I was only mildly surprised when, in my capacity as an Associate examiner for the subject, to come across a number (while not overwhelmingly numerous, was certainly sufficient to create an impression) of student examination scripts which reproduced my sample reflective statement in exact prose save for modifying the title of the essay and the listing of specific bibliographical sources. It would seem that despite having some experience in active learning, there remain a set of students who do not have confidence in their learning process and who are unable or unwilling to accept that a sample is not meant (in this instance) to be prescriptive and who despite having undertaken a learning activity, are unable to exert ownership over their learning process and produce a critical analysis of it.

Perhaps if the Problem Method was used in a more concerted and consistent manner as a teaching technique in the third party institutions, students would have ample opportunity to engage in active learning tasks and would be able to refine their learning processes through experience and critique. However, similar to the obstacles discussed in using the self solving technique, practical difficulties make it difficult for independent third party institutions to use the problem method as a primary teaching technique. As recognised by Ogden (1984) and Moskovitz (1992), the problem method requires extensive pre class preparations on the part of the teacher and will only be effective if classroom sizes are kept sufficiently small enough that each student has a chance to discuss his prepared solutions. As evidenced by research data, third party institutions have large class sizes and it may not be possible to divide them into several small groups to effectively use the problem method. In institutions which rely on teaching staff who are also full time practitioners, the institutions may not be able to compel the teachers to commit to the amount of pre class preparation necessary to draft the appropriate problems and solutions. Ogden (1982) also cites the drawback that the problem method is very time consuming and in the limited time allocated for teaching during a single academic year, it may mean that some parts of the syllabus

may not be covered. Ogden (1982) argues that sacrificing full coverage of the syllabus and learning rules and doctrine which may be amended or overruled in later years is a necessary trade off in order to gain the advantages of problem solving skills which are of long term benefit and will not become irrelevant or obsolete.

"I do try to set up projects and research tasks for the students which would require them to go and look for answers and to look into material which may not necessarily be legal but also historical or cultural. In my subject Public Law, students have to study a political and Constitutional system that is very different from what they know about, if they even know it at all. As you know, Singaporeans, especially the younger ones do not really have much political knowledge or interest. So I design these projects in a way to get them to look for material and read about history, Magna Carta, devolution of power and things like that. I find it makes things a lot more interesting than me just telling them about it in lecture format. And I think it's going quite well actually because I just did the public law project with them, having given the students the relevant reading materials to go and research on their own research, I found they have gotten the grips of the matter in a lot more detail than they would otherwise do. An example is like there is this team that was doing project work on retrospective law and the relation to the rule of law. They found a lot of stuff, going beyond the set textbook. So they ended up reading material that they had gotten from journals and newspaper which they otherwise would not have by just relying on the lectures and the lecture handouts.

But I do this only with the small group of full time students that we have. I think time is an issue. Part time classes we are running twice a week, at most three times a week. it is actually a little impractical time wise to actually run project sessions for them, although they should be doing it on their own, they should be reading on their own. I try and encourage them once in a while, asking them to read certain articles or tell them about articles that we will see". (Lecturer- third party institution, Singapore)

"The problem that we see is time and confidence. We do have a group, a large group of students that are very active, and they take part in activities that we think will enhance their learning, like we do have a very strong debating and mooting team and they have even taken part in international competitions and the students that are on the team and who take part in all the school societies tend to be the ones that do well and are well rounded students, they do not simply memorise information. But we do have many students who are not confident, usually because of language difficulties or sometimes they have other commitments like family issues and they tend to be the ones who keep quiet in class and who tend to just read the notes. They don't really do activities like online research or writing their own drafts to answer a question because they are not sure where to start". (Principal/Lecturer- third party institution, Bangladesh)

"I think the issue that I face the most here is that students are pressed for time. I don't think any of my students are full time at all, they are all working in some way and many have family commitments. It is difficult sometimes for them to attend the classes and go through the London material, so I do tell them they need to prepare certain things before class, such as reading a certain topic or chapter, but it is difficult to set more extensive preparation because they do not have the time to do it". (Lecturer- third party institution, Jamaica)

6.6 Learning in a Community of Practice

From the above analysis, it appears that it would not be possible to describe the students who are reading for the UOL International ULP and who attend and receive tuition support from an independent third party institution as learners in a CoP. It is certainly possible to identify some constituent elements of a CoP on a surface level but on deeper examination, it has to be concluded that a full and effective CoP amongst students in third party institutions does not really exist.

It is evident that there is a domain within which the students exist and which frames their purpose and guides their learning. The students are clear of the objectives in pursuing this qualification indicated, as evidenced by research data, that they share common goals in terms of the desire to achieve what they regard as a prestigious qualification and are aware and in agreement with the objectives and expectations of the UOL.

“I think the standards of London are very high and I think that they expect students to show that they are of good quality and that they can understand and apply the law or even to criticise the law. It’s hard but I don’t think that it’s unreasonable. If it was an easy degree anyone would be able to do it and then it would lose its status”. (Second year student – Bangladesh)

“I think the UOL wants or expects students to show that they are a cut above the rest in order to do well on this programme. The standards are high because UOL is an established university and their standards are well known, so I think it’s no different for external students. We all know how difficult it is to get into one of the UOL colleges, like King’s or LSE, you must have done very well in A levels. Usually only students from the top junior colleges here manage to get in them, so we know what kind of quality they are looking for, so since the external is marked and judged on the same standard as a study who is studying in LSE, it’s quite easy to tell what kind of standards they are looking for”. (First year student – Singapore)

“I had a bit of shock after my first year. Actually, I was in shock during the first year itself, I had an image of what law school or doing a law degree would be like, and I didn’t think it would be easy, but when I received the box of materials from London and started attending the classes, I knew that it was going to be much harder than I thought. There was just so much material to go through and then you go on the VLE and the Online library and it opens up another world. So I really put in a lot of work or what I thought was a lot of work and when I had the first year exams, I finished them and I thought ok, I did pretty well, I was fairly confident of good or even great marks. But when the results came out I was shocked. I did fairly well but for the work that I put in I seriously thought I would have gotten higher marks. So this made me reconsider things, and really ask myself what is it that London is looking for and that maybe I need to change my way of studying or answering questions. I think London is looking for a student to be able to stand out, to show that they can reason and have an opinion on the law and to be current and relevant with the latest developments”. (Third year student – Jamaica)

However, students seem to speak of the objectives and expectations of London in an abstract sense without being able to directly pinpoint specific goals and criteria which define the domain. Not one student interviewed made reference to the assessment

criteria as set out by UOL and contained in the student handbook and regulations booklet which have been distributed to them upon registration. While agreement and commitment to a goal stated in general or abstract terms can frame a domain, to effectively guide learning in the community, it would be ideal if the members of the community of practice are aware and share specified goals and identify issues of purpose. Notwithstanding, Wenger et al (2002:31) states that even if members are unable to articulate their view and definition of the domain to outsiders, it would not be detrimental in shaping their learning as long as the members shared an implicit understanding and agreement of the values of their domain.

With regards to the second element, the existence of a community, it is again evident that the students regard themselves very much as a community of students not only within their own institution but within the community of students of UOL. Research data indicated that although students were involved with the day to day activities of their institution and to a certain extent were influenced by or exert influence on the teaching and learning environment in the institutions, when interviewed, the students unequivocally stated their recognition of the fact that they were first and foremost, students of the UOL and that they were learning within the space shared by all students of the UOL. However, Wenger et al (2002) define a community as a space within which the members build relationships with each other and it is through mutual interaction when building such relationships that gives rise to a culture within which the members build their learning and new members are gradually inducted into.

It is difficult to identify a community in the deeper sense due to a number of reasons. Students reading for the UOL International ULP, due to the nature and structure of the programme, are studying in different countries and are separated geographically. Although a community does not need to share physical space, there must be an arena within which they can mutually interact and build relationships. Students do interact with their fellow students if they are studying in the same third party institution, but while the cohort of a single institution may form a micro community of its own, it does not constitute a community of students of UOL who are on the programme. Due to reasons of commercial interests, third party institutions are reluctant to encourage or organise activities which allow for co-mingling of students across institutions due to the fears that students may leave and join another institution thus causing them to effectively lose a customer, as evidenced by research data in the chapter on third party institutions.

Research data also indicate that students would welcome initiatives on the part of UOL to integrate them into a learning community with effective resources and communication tools to allow for positive identification of a defined space within which to interact across geographical and institutional boundaries.

"I definitely consider myself a student of UOL. Because I sit for their exams and at the end, they are the ones that will award my degree. But of course, it's different from a student who is actually studying at one of the UOL colleges; they definitely have a more obvious connection with UOL. It would be nice if there could be more interaction with the UOL as a student. For example, if we could have some form of teaching, either having the lecturers come to our country or online. I mean, our institution does invite some UOL lecturers to come out for revision or guest lecturers but it's not for all subjects and it may not be every year. It depends on what the institution decides. So

some kind of contact, regular contact would make us feel more a part of UOL” (Second year student – Malaysia)

“It’s strange in a way because we are UOL students but not exactly because we are not in London. We do have a lot of materials from London so that’s good because we are not left on our own but sometimes you have certain issues and you wonder if anyone else is thinking the same things or feeling the same way. I think what would be useful is to have maybe sort of an official UOL operated online page or a forum where students can have discussions or share feelings and ideas. Or even to have sessions which are moderated by a UOL lecturer or personnel. I think students would find that useful and we would feel more connected with each other. I think some of the students did try to start an online discussion group for those in this college at the beginning of the year, but it sort of stopped after a few weeks because there was no organisation and nobody really went online to discuss anything. So if it were organised and managed by UOL, students would be more willing to join and share with each other”. (First year student – Jamaica)

“I feel connected with UOL definitely. I think we share an experience and you know that the UOL will help you if you need anything. I think last year I had some difficulties with registration as there was some confusion over the spelling of my name and I emailed someone in London, I can’t remember who it was and I got a reply right away and the problem was resolved, so there is that help and support. And the alumnae is very active in Bangladesh and I plan to join when I graduate. But in terms of activities with the UOL, I am not connected in that way. We don’t really have any activities organised by the UOL. I think it would be nice, I know many students will definitely take part if UOL organises some activities, even within Bangladesh or among other countries, just for external students, like mootung competitions and if there were prizes which are awarded by UOL itself”. (Final year student – Bangladesh)

“I had a really nice experience last year when [XXX] examiner came for revision lectures and after that a couple of us students took him out for dinner and drinks and my husband came along as well just for fun and he (the examiner) had a really nice chat with us. He was telling us about his research and teaching students at LSE and his impression of the external students and what he expects when he marks. It gave me a deeper understanding of how things work and his views were very entertaining, but I think we enjoyed it as it put a more human face on the programme to see and talk to someone from UOL who is an actual examiner”. (Recent graduate – Singapore)

While it is possible to loosely identify a domain and a community, the third constituent element of a CoP remains elusive from the research data gathered. The final element is that of a shared practice. A shared practice represents a set of cultural norms and understandings shared by all members of the community and to which new members are socialised into. Following Wenger et al (2002) it represents a baseline of common knowledge about how what should be done in relation to issues relevant and important to the community. While having a shared practice does not preclude or exclude innovation, members can only innovate and move forward to enhance development in a community if all members share agreement and understanding about what constitutes social acceptability in terms of actions within the community. Wenger et al (2002:38) define this as “a set of common approaches and shared standards that create a base for action, communication, problem solving, performance and accountability”.

From the research data, it is seen that the practice of learning as shared by the majority of students who are reading for the degree and attending at an independent third party institution does not accord with the norms of the practice of learning as defined and understood by the UOL. The practice shared by the students evidence a cultural acceptance and usage of methods which are considered by the UOL as passive learning whereas the UOL has, in accordance with the current definitions of the objectives of ideal legal education, developed and normalised– at least as an ideal - a practice of active learning. It is thus difficult to see how, on a general level, there can exist a shared practice between UOL and the students within the context of the research framework.

The unique nature of the programme and the fact that until the mid 2000s, the UOL has been very remote from the external student, in terms of communication of expectations, provision of resources and personal interaction and understanding of the unique environmental conditions and challenges under which the students have been studying. As such, the divide has allowed for and perhaps fertilised the divergent development of practices. Lave and Wenger (1991) argue that it is socialisation of learners into a community through active participation that allows them to learn in a meaningful fashion. Students on the programme have not been given the space or tools to allow them to be socialised into the community of UOL students as defined and cultivated by the university. Of course, this brings to mind the question of whether there is, in the first place, an identifiable shared practice amongst students internally. It is argued that this question is best placed to be answered in another research context, but that at the very least, it is assumed however, by the UOL academics and the tutors in the third party institutions that at the internal level, there is greater cohesion into a community in each college.

The recognition of this situation thus gives rise to a starting point to consider issues of practicality and possibility in trying to establish a shared practice, and if so, which set of practices should be normalised as a standard for which new learners should be socialised into.

Chapter Seven

Concluding Analysis

7.1 Conclusion

Given the growth of transnational education what can be learned from this case study? First change occurs at two levels: the general environment and the particular level of the programme and how they fit together appears a deeply political matter. Through the preceding chapters accounts of choices, divergent perspectives and role have been brought out. One of the clear issues is that participation on the ULP forces individuals to be clearer about their perceptions of education and to re-think and to be, perhaps, more open about their practices. If many do not think about pedagogy internally, on the ULP they confront pedagogy.

For this particular programme history cannot be escaped: it is plain to see that the programme developed organically as a natural consequence of the UOL in making a distinct separation between the functions of teaching and examining. Clause 36 of the Charter of 1858 marks a watershed moment in the creation of the International ULP (and indeed all other degrees – undergraduate and postgraduate- offered by the UOL International Academy today). Once the UOL was established as an umbrella examining and awarding body, it allowed for students to sit examinations and be awarded qualifications regardless of whether they had attended a course of study or whether such course of study was conducted or provided by any of the teaching colleges of the UOL.

The popularity of the UOL International ULP has more or less remained strong and constant and the manner in which the undergraduate degree is read by majority of the international students today can be directly linked to the manner in which the programme has been conducted through the years. By holding itself as a strict examining and awarding body the UOL was in effect, undertaking the most remote form of distance education (Peters, 1998). The UOL took no responsibility for the manner in which the students readied themselves for the examinations or set any learning objectives or parameters, save for a syllabus outline and required reading. If one were to, rather crudely, relate the experience and education and the awarding of qualifications to a product, then it had to be said that the students or customers of the UOL studying externally were rather short-changed in terms of customer care and follow up. However, this did not dampen general student demand and as stated by the Former Director of the ULP, even in the lean years, during the late 1980s to mid late 1990s, there had always been a core number of students registered from certain geographical markets. The core and continued demand stems from the international recognition of the UOL as a respected educational organisation and the confidence that a qualification awarded by the UOL will offer the award holder a number of opportunities for progression. The guarantee undertaken by the UOL and protected by Charter that students are examined to the exact same standard regardless of whether they are sitting for the examinations as internal or external students has strengthened the confidence in the integrity and quality of the qualification awarded by the UOL. Research data has also indicated that the high rankings enjoyed by the UOL colleges in university league tables have also added to the confidence of students, especially

when the academics undertaking research and teaching in those colleges also examine on the International ULP.

Despite the allure of the prestigious award however, students found the remote manner of education difficult to cope with. Students of traditional university age just leaving secondary education found the study of law to be complex and conceptually foreign, mature students struggled with professional and familial commitments in addition to the heavy load required for study. Students in certain geographical locations found it difficult to access or purchase the textbooks and other resources recommended in the reading lists. From these challenges to learning faced by the students, there arose a demand for a middle man teaching provision. Students took it upon themselves to seek out persons who had the required legal knowledge and request tuition in return for compensation. The popularity of the ULP, especially in certain geographical markets and the resulting swell in demand for tuition led to commercial business opportunities in the setting up of formal organisations dedicated to providing tuition support, sometimes exclusively for the UOL International ULP, in return for a profit making fee.

While initially treated as tolerated outliers by the UOL in the structure and operation of the ULP, the UOL has gradually recognised the necessity of and contributions made to the programme through the existence of such independent third party institutions. Such recognition has been formally enunciated in the Self Evaluation Documents of 2006 and 2012, where the UOL stated its commitment to working with and nurturing relationships with the institutions and towards building a community of practice in teaching and learning. Initiatives such as skills workshops and providers' conferences are practical attempts towards furthering these objectives.

From the onset, the aim of the thesis was to shed light on a field of operation which had been previously overlooked in the literature of legal education, distance education and multinational legal education. It sought to do this by building a narrative account of the current practices, processes and perceptions of the key stakeholders involved. In the course of building the narrative, a key question which bound the thesis was whether it was possible to identify a community or communities of practice between the stakeholders. To these ends, the possibilities of several communities were identified. At a macro level, the question was asked whether a singular CoP can be identified between the UOL International ULP, independent third party institutions and the students. On a micro level, the question was asked whether each of the three main stakeholders group could legitimately be termed a CoP amongst themselves. This analysis at a micro level is further extrapolated by investigation of the possibility of a middle ground where CoPs could occur between stakeholder groups, for example, a CoP between the UOL academics working on the ULP and the independent third party institutions, or one between independent third party institutions and the students.

The main findings is that as far as the macro CoP is concerned, while there are elements of the constituent factors, research data shows enough divergence that a single CoP cannot be identified. For example, the expectations of deep and active learning held by the university does not seem to match the evidence of surface or strategic learning practiced by the students. Thus while on the surface, there may be joint enterprise, i.e the shared goal or working towards the same ends, shared repertoire/practice is incomplete.

Identification of CoPs at the micro level was more successful. CoPs can be identified amongst students at least at local level and CoPs can clearly be identified amongst third party institutions. Certainly the data has evidenced that although there is an element of commercial rivalry, the institutions do perceive themselves as having a common interest in maintaining the legitimacy of the programme and when an external threat is posed to the viability of the programme, the institutions react in a concerted effort to protect their shared interests. The fact that, in Bangladesh and Malaysia at least, the institutions identify a problem of staff poaching and crossover show that the institutions share enough of a common practice or culture, that a member of staff can join another institution and be very quickly assimilated into the working and teaching practices therein. Anecdotal evidence from institution heads in Trinidad and Tobago indicate that a fairly friendly relationship between the heads of the three main institutions and recognition from one institution head that the disparate personalities of each of the three heads and their respective strengths and weaknesses make it possible to cater to a wide range of student needs. Thus niche market share of each institution is somewhat protected and maintained, while at the same time providing in concert strong teaching support for the ULP within the country.

An interesting finding that was left unanswered was whether the UOL academics constituted a CoP amongst themselves. Again, while there were strands of the constituent elements, the engagements between them with respect to the programme were so fragmented that mutual engagement was difficult to identify. There were certainly moments of engagement between some academics in certain instances. A number of academics also occupied positions on the Board of Examiners and the Examination Panel and some standing sub committees. In this capacity, there were occasions which allowed for mutual engagement. Further, observation data showed that where there was opportunity for overseas teaching engagements, whether on revision trips organised by the university or at private request of the third party institutions, a form of comradeship developed amongst the academics on the trip. On such occasions, there were several instances of casual conversation over dinner once teaching for the day had concluded where the academics compared notes on their teaching experiences on the UOL International ULP and engaged in conscious or (?) unconscious reflection of their practices and perhaps comparison of the students encountered on the trips with the students they teach internally.

While such reflective conversation is usually lively and of pedagogical value, such trips take place on such an infrequent basis with a rotating cast of different academics, that it is not possible to gauge whether engagement at this level can or had been taken further to constitute an effective community with a shared practice or culture. Another issue is the large number of academics involved in assessment of the ULP examinations. Most of these academics are solely involved in assessment and do not, or are unable to, take part in any teaching opportunities for the ULP. This may raise the argument that such limited involvement makes it difficult to raise the claim of any meaningful amount of mutual engagement, But then again, mutual engagement depends very much on the nature of the operation and if it only allows for fragmented mutual engagement then that element is fulfilled.

Another issue that may challenge the possibility of a CoP between the academics on the UOL International ULP is the fact that some members of the putative community

may be disenfranchised through lack of access to relevant information that could strengthen mutual engagement and assist the building of shared practice. A large number of academics involved in assessment do not contribute to syllabus development or the design of assessment tasks. The data reveals that such information is available for example through the ULP's VLE but there is no formal concerted mechanism to ensure that such information is disseminated to all the academics, thus access to information is very much dependent on the individual academic's initiative to seek it out and as such runs contrary to the element of sharing a common set of resources and tools required in a shared practice. The question of whether CoPs could occur at an intermediate level between macro and micro raises some interesting possibilities. From the analysis in the chapters on Independent third party institutions and Teaching and Learning, it is clear that there is fertile ground for a CoP between UOL and the independent third party institutions to exist and perhaps even flourish, but this is hampered by certain practical and commercial limitations on both sides.

Firstly, greater engagement on the part of the UOL with the institutions would require frequent travel, not only by the members of the ULP team but also the academics working in the individual colleges in the Laws Consortium. The academics may not be able to undertake such travel due to their internal employment commitments. The numbers of institutions in varied locations across the globe also represent a challenge to visit in terms of travel cost and time. Certain institutions welcome greater engagement and are willing to defray the costs by making a contribution, however, not all institutions share similar financial means and it would be anathema to the concept of a community of practice if engagement was dependent or available only to those who could afford to create the opportunities for it.

Secondly, as identified in the analysis the greatest challenge towards the healthy existence of a community of practice between UOL and the third party institutions is the fact that they do not have a clear shared practice. While this does not necessarily negate the existence of a CoP, it may cause some conflict when it comes to developing initiatives for the future. Should the programme concentrate on independent learners and develop new markets? That would seem dangerous in the short term at least. The third party institutions are the clearest case of mediation with the learners and the main difference lies in the interpretation of the expectations of the UOL and the pedagogical methods used by the independent third party institutions to prepare the students in meeting such expectations in the examinations. There is clear agreement that UOL expects students not only to demonstrate their knowledge of doctrine but to also demonstrate a certain level of cognitive and critical thinking to exert ownership over the material learnt and to demonstrate the ability to manipulate the material to suit both sides of an argumentative divide. Students can only demonstrate such abilities where they have engaged in active learning and have internalised the material to the point where they have the confidence to put their own stamp on it or to accept or reject threads of the material as they see appropriate.

From the research data, it is shown that institutions rely mainly on the teacher dominated lecture style teaching methodology which allows students to remain passive in class and simply receive what is being told to them. The idea that it is possible for a student to be taught everything which they need to know in order to do well in the examinations lead to extreme teacher reliance, thus further diminishing the perceived

need in the student for them to undertake active learning. This situation has been characteristic of the operation of the ULP for a very long time and it is only in the mid 2000s that divergence in expectations and pedagogy between UOL and the institutions have been expressed as an issue.

The move of the UOL International ULP from being the most remote form of distance education (Peters, 1998) towards greater engagement with the students by providing learning resources and clearly stated learning aims and objectives in order to guide their study and to give them more clarity and direction over the assessment expectations. Students are provided with essential textbook and statute books for all core law subjects as well as access to an online library and the VLE. They are also provided with study guides for all subjects undertaken, which have been designed to take the students through a series of learning activities that will encourage active learning and also direct the material towards key examination expectations.

It is this move that has partly opened up a divide in shared practice. Interviews with the UOL academics have produced data that shows that the academics are very doubtful about whether the students have been utilising the resources in the spirit intended and some doubt have been cast on the institutions not being able or willing to properly incorporate the UOL resources into their teaching and to guide students on the appropriate use of the resources in their learning. The Former Director of the ULP has spoken of incidences of teachers in institutions (that he has personally encountered) actively instructing students not to use the UOL materials provided as they would only confuse matters in the students' minds and instead to rely on material provided by the institution as they were created specifically with the aim of simplifying things for the students and condensing all knowledge that they need into easily understood formats. Some teachers in institutions have stated that they do not really incorporate the UOL materials into their teaching nor do they design their teaching activities around them, although there are an increasing number of teachers who are gradually doing so. Inconsistencies in the quality of the materials or contradictions contained within to assessment expectations have been cited as a reason why not all teachers are willing to use them or will only use the materials for certain subjects. This issue has been recognised by the UOL and action has been taken to address it. The appointment of subject convenors (who are also the Chief Examiners) for all subjects ensure that each subject is headed by a single person who is responsible for designing the assessment tasks and also ensures that the resources for that subject are consistent, up to date and appropriate for students to utilise in preparing to meet examination expectations.

Further steps could be taken to strengthen consistency in shared practice and a good move (welcomed in theory at least) by the institutions would be for dedicated workshops conducted by the UOL in individual institutions to guide the teachers on the appropriate methods of incorporating the UOL resources effectively into their teaching and also guidance on how to design teaching plans to foster active learning. Such workshops have been conducted on an ad hoc basis in a few countries but teacher turnout has been fairly disappointing, the reasons for which have been discussed earlier. The suggestion that teachers who have undergone the requisite specialist training be awarded some formal recognition by the UOL has been suggested as an incentive, however, the UOL may be wary of undertaking initiatives which may be regarded as affiliation with third parties not in their direct employ.

Another serious obstacle to the existence of a CoP is the perception of the members of their role in the community. A CoP requires that all members regard themselves as equal and working towards a common objective as defined by their domain. Even newly inducted members in the community, although they are learners should see themselves as equal contributors during their learning phase. With regards to the UOL and the independent third party institutions, it is possible that not all members may regard themselves as equal. Research data has shown that some teachers in the institutions feel that they are hampered in the amount and nature of the participation in the community because they do not have academic authority over their students and may be regarded as mere service providers by the students. While they are encouraged to utilise the UOL materials in their teaching, the fact that they are teaching using materials not created by them may result in a loss of control and ownership over their teaching. It may be difficult to regard yourself as an equal member of a community when the textbook that you use for teaching is written by another (supposedly) equal member of the community. Greater confidence can be nurtured by the teachers in the institutions if they undertake research in addition to their teaching. In all the institutions visited during the fieldwork, the teachers were mainly recruited from the ranks of fresh graduates, who then take their teaching cues from the teachers who had taught them and were highly regarded during their time as a student. The encouragement for the fresh graduate teachers to undertake post graduate qualifications, especially in law, would expose them to opportunities of active learning which they can then incorporate in their teaching. Undertaking postgraduate research in a specific area would also foster greater confidence in one's knowledge, thus creating the space to exert ownership over the material that they are teaching.

Another possible avenue of increasing legitimate peripheral participation in the community from teachers in third party institutions would be to institute measures to allow them to contribute towards creating materials, such as articles or learning activities, that could be incorporated and distributed to the students as part of the package of learning resources officially provided by the UOL to the students. This would mean that the teachers in the third party institutions have a greater stake in fostering an environment of active learning and would increase their sense of responsibility towards having a stake in assessment expectations. It would also increase their self perceptions as legitimate members in a community of practice.

However, this would require the UOL academics to take on a further role in vetting and collating these contributions to ensure that they are in sync and consistent with the academic direction, expectations and standards of the UOL and this may be impractical in light of the demands already placed on their time by their commitment in their primary employment as well as additional duties on the ULP. Further, issues of additional recompense and intellectual property may mean that costs are increased in the operations of the ULP, which may ultimately be passed on the students, thus encroaching on the ethos of accessibility. Most importantly, such an initiative may also be perceived by some (perhaps unfairly) as diluting the high academic standards of the UOL, which is the fundamental basis on which the ULP has enjoyed strong international reputation and custom.

The data also show possibilities for the emergence of a CoP between UOL International ULP and the students. Certainly interview data from the students show that despite them receiving tuition from an independent third party institution, they are

very clear and unequivocal about their relationship with the UOL and that they regard themselves firstly, as being students of UOL and their relationship with their institution even where such relationship is mainly full and positive is a consequence dependent on their primary relationship with the UOL. Certainly the UOL, despite increasingly greater acknowledgement of the role played by third party institutions regards itself as having a relationship with the students regardless of whether they have made the choice to attend at a third party institution. Data also shows that students seem to have a clear grasp in theory if not in practice of the expectations of the UOL and view themselves as engaging towards those ends. To the question of whether there is mutual engagement, things are less clear. Certainly, during the time period reflected in the research, there has been evidence of attempts at greater mutual engagement when compared to the previous 2 decades, for instance. This was partly due to the move on the part of UOL to bring about a resource rich environment in order to facilitate active learning. Students were provided with a high level of reificative material with the intention of seeking to equip them with the appropriate tools to assimilate as learners within the culture advocated and practiced by the UOL. Further engagement was also enabled through the creation of a VLE and the design of interactive learning activities that that can undertaken independently by the students with opportunity for limited feedback, and the setting up of a forum where students could engage with each other under the formal auspices of a space provided by UOL. There have also been more frequent attempts on the part of UOL to engage with students face to face by resuming the practice of organising regional revision teaching trips.

As to the question of whether these attempts at greater mutual engagement leads to the effective functioning of a community with a shared practice, data is less conclusive. Certainly, interview data from the UOL academics indicate a concern of whether the learning material provided by the UOL is used at a frequency and in the manner that the UOL intended. Several UOL academics have indicated that from their experience in marking examinations they have encountered student answers which have not displayed evidence of active learning and in some instances alarmingly, evidence of students presenting erroneous knowledge in contradiction to what was provided in the learning resources. It must be borne in mind, however, that due to the sheer size of the operation, the putative members of a CoP between the UOL and the students would consist of thousands. Also, due to the ethos of open access which underpins the programme, the student members come from different circumstances with differing abilities. It may therefore, be the case that there is indeed a community with a shared practice but due to the size of the community there will inevitably be members that fail to be fully assimilated into the culture due to reasons of disconnectedness or inability to absorb or understand the shared norms and practices. Wenger et al (2002: 146) identify this as disconnectedness where the members of a community are unable to understand or find meaning in their activities because the size of the community is such it is unable to allow those members to engage effectively.

The possibility of developing or strengthening a CoP between UOL and the students also lead to the issue of whether it may cause tensions with the CoP between UOL and the independent third party institutions. If the UOL and the students are able to form a CoP with an effective culture of learning amongst the students, then it raises the possibility that students who currently feel the need to receive tuition support from an institution may decide that it is not necessary in light of their learning needs being met through their engagement with UOL. As such, there may be the fear on the part of the

institutions that if UOL strengthens its distance learning initiatives to the point where they are able to effectively meet the teaching needs of the students, then the gap in the market caused by the former examination only model may cease to exist and with that the consequent cessation of the commercial viability of the institutions.

Thus, the independent third party institutions may regard greater engagement between the UOL and the students as a threat towards the mutual engagement shared by them and the UOL, thus diminishing the existence of the common domain previously enjoyed.

7.2 The Student Experience

The research data has indicated that students, much like the teaching staff in the independent third party institutions are fully cognizant (at least at a theoretical, if not always practical level) of the expectations of the UOL in terms of learning objectives and the assessment expectations which require that students do not simply display doctrinal knowledge but to also demonstrate critical analysis and general skills. However, the students do display a marked measure of self interest in terms of the end goal of obtaining a desired qualification. Interview data has shown that students (depending on their circumstances) face certain particular disadvantages in trying to subsume themselves in active learning. These circumstances are, in the main, a difficulty with the intricacies of the English, particularly the legal, language; balancing work/life commitments and a heavy study workload, and a lack of preparation in their primary and secondary education to equip them with the skills and confidence to become active learners. Faced with these obstacles, students resort to the comforting familiar of teacher dominated passive learning in the hopes that a tried and tested reliance on absorbing vast volumes of doctrine will somehow be sufficient for them to earn the minimum qualification required for their purposes, thus eschewing the additional efforts required to meet the expectations of a first class or second upper honours award.

The UOL International ULP has, in the past three years, been steadily increasing the opportunities and space for students to immerse themselves in a culture of active learning. This initiative started in the mid 2000s, with the design and distribution of learning materials and resources to students, such as the provision of comprehensive study guides and the creation of a VLE. Recent measures include the provision of online lectures and seminars conducted by UOL academics and designated online live interactive question and answer sessions facilitated likewise by UOL academics. The live interactive web sessions have, from informal anecdotal evidence recounted by ULP staff, proven fairly effective in generating discussions and debates although each session is attended by a fairly small group of students (relative to the number of students registered on the programme for the subject). It may be worthwhile to consider making online attendance and participation at such sessions compulsory as part of the student learning experience, thus introducing a virtual online attendance requirement as part of the programme. Such a move would directly place the students within a community with the UOL academics and through interaction during the sessions increase their familiarity with the shared practice therein.

Again, implementation of compulsory online attendance and participation would mean a host of practical challenges. It would completely change the model of distance education as exemplified by the UOL International ULP. Although organic change as described earlier has brought the programme from the extreme sobriquet bestowed by Peters (1998) of the most remote form of distance education, by mandating compulsory student attendance and participation would now mean that the UOL has taken direct responsibility of control over teaching and learning. This would result in issues of allocation of control and responsibility. It may not be possible for UOL academics who are in full time employment at a college to also take on separate responsibility for the volume of teaching necessary to facilitate such a large scale operation bearing in mind the numbers registered on the programme annually. The costs required to fund such an operation would naturally increase and be reflected in the fees payable by students, consequentially excluding some which would, again go against the ethos of open access. Not only would it require a full redesign in the manner in which the programme is delivered, there also remain logistical issues to trying to get a great number of people to log in and maintain virtual attendance across a myriad of time zones, not all of whom share access to the same level of internet network capabilities.

At this point, it presents an interesting starting point for future research to consider the question of trying to find out the demographic of students who have thus far been actively attending and participating in the web discussion sessions and online discussion boards. If the students who participate are largely studying independently without recourse to tuition support from a third party institutions, then it would seem that willingness to immerse in participation with the learning activities of the UOL tend to be keener where students do not have the safety net or influence of institutional support. However, if enrolment at an independent third party institution is not a differential factor in the demographic of the students who actively engage in learning activities designed and conducted by the UOL, then it may mean that the impetus for engagement in active learning depends largely on the individual student.

Students have related in interview data a desire to see further initiatives to include them in activities and interaction officially conducted or facilitated by the UOL. This is evident from the growing level of usage and participation in online activities on the VLE. Social media has also allowed for greater cross interaction among students, and there are currently several active Facebook groups dedicated to different aspects, both personal and academic, of the student experience as a UOL International student on the ULP. From a brief perusal of comments on social media and anecdotal data, students have indicated a desire that UOL organise annual social activities or outings, such as visits to the Supreme Court or the HOL, to help bring to life the abstract which they are studying particularly for students who are not familiar with British political or legal culture. Such activities could be scheduled around the dates of the weekend seminars since students may already be planning travel to London to attend those. While these measures may certainly increase the feeling of togetherness in the community, due to the vast numbers of students on the programme, it may be logistically impossible to implement measures that will ensure that each student is allowed full and equal immersion in the community. Bearing in mind these limitations and limited resources, it may be better for the UOL to concentrate on measures that have been researched and quantifiably proven to a certain extent to aid or increase active learning.

A vital component of learning in a CoP is through participation or “doing” while immersing in the shared practice till the learner becomes a fully integrated member of the community. As such, it would be useful for the initial inductees in the community to have a clear conception of what the fully integrated or senior members of the community regard as an outstanding, acceptable or sub-par result of “final product”. Within the research context, the students are required to sit for unseen written examinations on which they will be assessed. Research data has consistently indicated that a major obstacle to active learning (at least as perceived by the students as well as teachers in the third party institutions) is lack of clarity as to the assessment expectations. Interview quotes have stated that although the UOL does publish a marking criteria, the language in part is too general and vague, thus making it difficult to interpret. The assessment tasks consist of different types of questions requiring different drafting techniques, as such applying general criteria in an attempt to decipher how to meet them in context of a specific type of question proves very difficult. As the research data demonstrates where understanding of the assessment objectives and expectations are unclear, it represents a challenge to assessment reliability and validity and where the learners are unclear as to the standard upon which they are judged and expected to achieve, they may become hesitant in their participation. In order to ensure that they participate, or in this context, learn in such a way as to produce a failsafe but not brilliant or innovative result. The learners are unwilling to take risks or be creative in their participation because they have not been provided with concrete examples to show the assessment expectations in manifest.

To these ends, almost all of the interview subjects (both teachers in third party institutions and students) have spoken of their desire to see in actuality what the UOL expects with regard to performance in assessment. The common desire is for UOL to provide, in the resources provided to teachers and students, model answers representing what UOL would deem to exemplify each assessment class. Such model answers would be linked with detailed feedback to show points or areas which the UOL examiners have regarded to be excellent, demonstrating high levels of critical thinking and analysis, or mistakes in doctrinal knowledge or interpretation. These answers could be extracted from actual student examination scripts or created by UOL academics or both. The suggestion for the additional resource to be provided by the UOL has found almost unanimous favour among teachers and students who indicate that it would be of great value in terms of guiding their teaching and learning.

However, although staff at the ULP and academics who contribute to the programme have indicated that this is one request that they constantly field when they come in contact with students and staff of independent third party teaching institutions, there are very mixed feeling about taking steps to implement this suggestion, despite the perceived benefit and value it would bring to their support institutions and consumer base. Some academics have stated that because of an element of discretion in the assessment process, it would be artificial to hold up individual answers as a singular model standard, in fact to do so may inhibit the learners’ willingness to experiment with innovation as they would naturally gear themselves towards meeting the singular defined ideal. Additionally, from the experience recounted by teachers at some of the third party institutions, students may get the wrong idea of the concept and purpose of the model answers as a learning resource and simply commit themselves to rote memorisation of the answers with slight modifications. This fear has roots in reality as demonstrated by the experience some examiners in CLRI have encountered when

students memorised an example of a fake research methodology published by the UOL as an example and passed it off as their own in the examinations. Some UOL academics have agreed that model answers can represent a useful learning resource, especially for students who do not have sufficiently honed writing skills and who find it difficult to start drafting answers in prose. Such students may benefit from looking at examples of peer writing which have been academically critiqued. Certain UOL academics are vehemently ideologically opposed to the usage of model answers as a learning resource citing reasons of student laziness and threats to autonomous learning. Nevertheless, the demand for model answers to provide greater clarity in assessment expectations remain a common theme among students and teachers in the third party institutions.

An alternative to the provision of model answers, which would still go towards the aim of increasing transparency of the assessment expectations and criteria would be measures to allow students to obtain feedback from UOL academics on written work which they have submitted prior to the examination for formative assessment not credited towards the final assessment. This measure has been implemented as a pilot project for a number of subjects in the ULP as an optional resource for which the students can choose to utilise for an additional token fee. Whether this initiative proves popular and useful as a learning tool remains to be seen as the pilot is in its infant stages and would require further research to test its effectiveness. This measure has an additional advantage over the use of model answers because it would require students to actually undertake the act of “doing” and in the process receiving the appropriate feedback to shape their product towards the criteria of the ideal.

Another alternative which would help towards the promotion of active learning amongst the students may be to redesign the assessment tasks to include formative coursework in place of unseen written examinations. Such coursework could be designed to require students to undertake a variety of activities within a set period of time, allowing them space and opportunity to undertake independent research and to demonstrate acquisition of practical and professional skills. This has been implemented in part with the introduction of the Law Skills Pathway 1 for students intending to obtain a QLD. Choosing this option would allow students to undertake a dissertation on an approved topic in place of a subject in the final year. Currently, not many students have opted to undertake this option and of those who do, many are not given the approval due to flaws in their submitted research question and design or due to lack of appropriate supervision. Some students and teachers in third party institutions have suggested the possibility of the programme being redesigned in such a way as to allow students to be assessed throughout their course of study on part coursework and part examinations. Reasons cited being that coursework and examination assess different skill sets and would represent a more balanced way of assessment. There are several universities in England and Wales offering QLDs which incorporate summative coursework as part of the assessment tasks, however, due to the unique nature of the UOL ULP, the introduction of coursework in assessment opens the possibility that some students may submit work that has not been undertaken by them (Self Evaluation Document,2012). Even proponents of introducing coursework based assessment agree that the perceived intellectual discipline and rigor associated with successful completion of a course of unseen written examinations would be diluted upon such a redesign. While it is impossible to completely ensure that students do not employ tactics that would allow them to entice others to undertake coursework for them, redesigning the assessment

process of the ULP to allow coursework on a large scale level, may, with present resources and technology, be impossible for the UOL to effectively police. Considering that students, at least in the geographical markets studied in the research, cited the international regard and reputation enjoyed by the UOL as a main reason they chose to undertake the degree, any initiative which may dilute the perception of the highest academic standards can only be regarded as a move unhealthy to the continued growth of the programme.

A final word may be reserved for technological mediation. The remarkable advance of the internet, mobile phone technology and newer forms of information sharing provide opportunities for many competitors to innovate. Certainly the environment poses challenges that the programme will have to face; therein its history and its particular identity issues may provide both a resource and a burden. How adaptation and innovation will play out is itself open to further research.

7.3 Final Reflections

The basis for this thesis was founded upon the recognition that within the literature currently structuring our understanding of legal education, distance education and multinational legal education, there remains a realm that has hitherto been unexplored. While the literature on legal and distance education has previously recognised the contributions of the UOL as a pioneer in English legal education and distance education, there has been no in-depth study on the modern operation of the ULP, which is strange in light of the scale of the operation which far surpasses the numbers registered in any individual undergraduate laws provision internally.

It is further recognised that the manner in which this mode of distance legal education largely operates gives rise to a phenomenon not observed in other distance education programmes, whereby roughly $\frac{3}{4}$ of the total students registered as students of UOL reading for the ULP are receiving tuition support from an independent third party institution. It is this phenomenon that gives rise to the tripartite inter-dependent relationship between the UOL, third party institutions and the students; and the thesis has sought to shed light on the workings of these relationships and the negotiations therein.

It has been highlighted in the introduction that the beginnings and early development of the UOL was the result of organic demand and response instead of conscious design, and the evolution of the UOL in its early incarnation to its modern form was the result of a series of negotiations, reactions and compromises. The method through which the majority of students reading for the International ULP today (receiving tuition from independent third party institutions and submitting to assessment by the UOL) has likewise come about through organic demand and response. And the continued viability and effectiveness of this method is dependent on a continual process of negotiation, reflection and mediation on the parts of the three main stakeholder parties. The term *sui generis* has been used to describe not only the UOL's mode of distance education through its External (now International) provision, but also the mode of study popularly utilised by most students on the ULP. It has also been used to justify and validate the thesis as a piece of original study filling in a gap in the existing knowledge.

While it is argued that the term *sui generis* is appropriate, it must be considered whether some of the perceptions and contentious issues that have been identified and presented by the research data are solely unique and relevant to the research context or whether they are in fact, equally relevant and applicable to the field of “traditional” undergraduate legal education.

One issue that has been recurrent throughout the narrative has been the desire on the part of UOL (expressed by the academics) to see evidence of active learning on the part of the students in the assessment. Such evidence of active learning has been expressed in many ways with the commonality being that simply storage and reiteration of knowledge is insufficient; it is the ability to exert ownership and the ability to interpret and manipulate the knowledge and to apply it appropriately in a critical manner that is desired. The ideal of active learning is echoed by the data gleaned from staff in the third party institutions and the students themselves, but further data evidence shows that in practice, the teaching and learning processes do not currently foster and encourage active learning to the desired level.

The need for active learning in undergraduate legal education and the recognition that the current approach to teaching and learning as not being sufficient to enable and encourage active learning on the part of the students is certainly not unique to the specific research context and seems to be an ongoing problem in undergraduate legal education in general. Literature on legal education throughout the 20th century shows a recurrent theme in the lamentation that current approaches to legal education are insufficient in meeting the aims of a critical liberal education and in producing students who are adequately prepared to enter into professional practice. Llewellyn (1935), Fuller (1948), Rutter (1968) and Klare (1982) are but some who have written on the deficiencies inherent in the academic stage of undergraduate legal education, with the main deficiency being a tendency to rely on an emphasis of doctrine and teaching methods which fostered passivity on the parts of the students. It would seem that the goal of ensuring active learning on the parts of undergraduate law students is one that is common throughout, regardless of whether such students are reading for the programme in the “traditional” manner or whether they are distance students like those in the specific research context.

More recently, literature on legal education centres around the fact that undergraduate legal education, at the academic stage at least, does not seem to be adequate in equipping students with sufficient transferable skills to perform well at the vocational stage in training. As such, the profession is seeing an increase in new members who lack the skills necessary to conduct independent research, to solve multi faceted problems and to communicate, both in writing and orally, in clear and concise manner. Edmonds (2010:11) has argued that the key skill that undergraduate law students need to be equipped with is that of being able to “find the legal principles and apply them to the circumstances of the case rather than about accumulating knowledge per se”. In addition to this, undergraduate legal education, at academic and vocational stages, should also seek to equip students with “functional skills, such as drafting and advocacy, client-handling and other wrongly termed soft skills – every other part of the economy regards those as professional and rightly so, management skills and commercial awareness and ethics” (Edmonds, 2010:14). Edmonds (2010) makes the claim that legal education currently, is simply failing in its purpose to produce students

that are fit for the current demands of the profession as dictated by the commercial and economic realities of today.

Lord Neuberger in his 2012 speech “Reforming Legal Education” regards with some scepticism Edmonds (2010) view that current legal education should be regarded as unfit for purpose simply because it does not equip students with the appropriate skills to face the commercial demands of modern professional practice. He argues that the foremost purpose of legal education is to enable students entering the profession to properly fulfil their role with the commitment to promoting and maintaining the rule of law. It is with this primary purpose in mind as the ideal against which the effectiveness of current legal education should be measured. In this context, legal education is to be regarded as fit for purpose if it is able to equip students with the necessary “knowledge, skills, integrity and sense of independence which will enable them to play their proper role in maintaining the rule of law. It is within that overarching framework that other considerations, such as those in the facilitative regulatory objectives, gain their value and meaning” (Neuberger,2012:8). While Lord Neuberger is reluctant to label the academic stage of legal education as being unfit for purpose, he does acknowledge that “there is real scope for the development of such skills programmes as part of a law degree”.

Mayson (2011) highlights the necessity of undergraduate legal education to equip students with skills in legal research, legal writing and legal reasoning in addition to knowledge. However, undergraduate legal education, as it is currently structured (usually over a 3 year programme with summative assessment at the end of each academic season), is not able to lend itself to effectively assess whether students assimilated and are able to display these skills.

The Legal Education and Training Report (LETR) 2013 has also identified certain gaps or deficiencies in the current provision of English legal education. Some of these deficiencies such as advocacy, professionalism, commercial awareness and relationship building may be more appropriately and fully addressed during the vocational stage of legal education should the student choose to proceed on to it. However, there are also gaps which need to be and can be addressed more effectively at the academic stage of legal education, such as those like the development of cognitive skills, legal writing and research and integrative problem solving techniques.

The struggle of how to effectively inculcate and assess appropriate skills is an issue that has also plagued the UOL International ULP through the research time frame. This was evident in the major restructuring of the programme in 2007 in order to meet JASB requirements that a QLD must be able to demonstrate that students have achieved and are able to display 7 core skills throughout the course of the degree. This required students in addition to undergoing summative assessment in the form of annual unseen written examinations to also, in their final year undertake a research project and collate a skills portfolio to be assessed on their achievement of the required skills.

It is the growing emphasis on the part of the UOL on the need for active learning and the development of core skills that seem to have caused differences in practice and culture between them and the third party institutions and consequently the students. The support for UOL as an examining body and the insistence of separation between

teaching and examination was championed citing knowledge as the key aim of learning. The test is display of knowledge and that alone is seen as rigorous and legitimate. This has gradually been displaced by the emphasis on skills and negotiation of knowledge, rather than mere acquisition of knowledge alone. It is this change in perception which marks the difference in shared repertoire in the communities of practice. Because of the insistence of UOL that knowledge itself is insufficient, but that students must demonstrate ownership of knowledge and through that also demonstrate skills of independent learning that has caused the divide in practice.

The third party institutions outline their challenge in dealing with a wide variety of students of differing capabilities, many of whom view the degree as a means to an end rather than an end on its own. Thus, the students, or a large percentage of them, are exam motivated and seek to engage in strategic learning. They then place the demands on the institutions to teach in that manner that aids strategic learning, which has been viewed by UOL as rote learning, with very little evidence of ownership and manipulation of that knowledge. The institutions repeatedly cite their inability, due to commercial constraints and lack of legitimacy, in implementing teaching approaches that support active and deep learning and contrast their students with the “London” or “English” traditional university student (a catch all reference indicating a student studying internally in an English university) The institutions argue that it is difficult to encourage the students to undertake activities which foster the building of core skills, which may in turn assist active learning, as the students cannot or are not willing to see how this would aid them in the final examinations which they still very much regard as a test of knowledge.

The “London” student is thus built up as a mythical figure, an ideal student who does subscribe to the lofty ideals of learning as an end of its own and is equipped through sheer circumstance of studying internally with all the appropriate tools and support to undertake active learning and the development of core skills. This perception casts the external student as the other, who by virtue of studying externally and having to sit for assessment designed by those who are not in charge of the teaching, is not in the position to enjoy luxuries such as active learning and skills development.

It is argued that this perception is inaccurate. While it is certainly true that the practicalities of encouraging active learning and skills development may certainly differ in order to meet the specific needs of internal and external students, the struggle is one that is common throughout legal education regardless of mode of study. In this regards, the perception that the difficulties in implementing pedagogical methods to foster active learning and skills development is a problem arising from and affecting only this unique structure of legal education is a fallacy. The LETR 2013 has shown that providers of the academic stage of undergraduate legal education have faced and are still facing the challenge to refine their syllabus and teaching techniques to more effectively equip students with the necessary skills identified as crucial for the purposes of legal education. Through the narrative of lived experiences presented in the thesis, it is evident that such issues are already evident in the operation and negotiations of the UOL International ULP throughout the specified research period and still continue to present a challenge to the programme today. The manner in which the UOL International ULP and the independent third party institutions evolve to meet this challenge will have parallels to the approaches used by traditional providers, and as

such provide a font of additional experience and data pool from which we draw our understanding of legal education today.

Appendix One:

The History of the University of London

A.1.1 The Beginning

The initial foundation and subsequent growth and development of UOL was organic instead of a result of deliberate design or architecture. Historical authority attributes the 1825 letter of Thomas Browning (published in *The Times*) for prompting Member Of Parliament Henry Brougham into putting an often previously discussed idea into reality. Inspired by a visit to Bonn University in 1820, he questioned the prevailing prejudicial attitude towards the existence of a university set in a metropolitan, capital city (Harte, 1986). Following Harte (1986:61-63): Browning suggested the establishing of a University for “effectively and multifariously teaching, examining, exercising, and rewarding with honours in the liberal arts and sciences, the youth of our middling rich people, between the ages of 15 or 16 and 20, or later if you please”.

However, Browning’s suggestion had been plaintively pleaded almost a century earlier in 1728 by Defoe, who (in rather logical fashion) asked: “Why should such a Metropolis as London be without a University? Would it not save considerably the expense we are at in sending our young gentlemen so far from London? Would it not add to the lustre of our state and cultivate politeness among us? What benefits may we not in time expect from so glorious a design? Will not London become the scene of science... Knowledge will never hurt us, and whoever lives to see a University here will find it give quite another turn to the genius and spirit of our youth in general.” (Defoe, 1728:5)

It must be said that Defoe was not the first to have such thoughts. Sir Thomas Gresham established (through his testamentary provisions) a college in London and provided for remuneration to professors who would give lectures to all who would care to attend (Harte, 1986). Harte states that these lectures were well received and the first meeting of the Royal Society was held at Gresham College in 1600. However, Gresham College went into decline from the early 18th century and never managed to develop into a fully-fledged University of the form envisioned later by Defoe and Browning.

However, even without a single institution formally designated as a University, a rough acceptance developed from the late sixteenth century that in some sense there were three universities in England - the first two being the traditional hallowed institutions of Oxford and Cambridge, the third being in London. This view was formed despite the lack of a formal university in London because a great deal of scholarship was undisputedly taking place there. Teaching and scholarship in London could be traced back to the twelfth century where the hospitals of St Bartholomew and St. Thomas began providing medical training (albeit likely to be very informally conducted). By the eighteenth century, five more hospitals were founded in London and each began to contribute more formally and systematically towards the provision of medical education, although none of them could be considered a full teaching and learning institution in their own right. (Harte, 1986)

³ By necessity the Introduction needed to give some historical backdrop. Therefore some material was presented there that appears in more detailed form in this chapter.

Furthermore, the Inns of Court in London provided scholarship and generated disciplined discussion in Law and studentship increased to the point where Sir Edward Coke described them as "The most famous university, for the profession of the law, or any one humane Science, that is in the world" (Harte, 1986:50, taken from Prest, 1972:1-6). John Stow's (1615) *Generall Chronicle of England* also acknowledged that the liberal Arts and Sciences were taught and learned at university standard in a number of different institutions in the City of London. Stow (1615) believed, and quotes the supportive view of Sir George Buck that the City of London could rightfully claim title to having a university, suffering from only the lack of a Chancellor (Harte, 1986).

Following Harte (1986), coffee houses and smaller, informal teaching institutions also generated scholarship and discussion of the sort recognised as higher education, but the conception of the University of London owed itself to Browning's letter to Brougham.

Browning's letter was also written at a fortuitous time when England was undergoing a period of social change generated by the Reform Movement (Logan, 1962). The grant of Catholic Emancipation in 1829 removed many of the earlier (discriminatory) restrictions against those of the Catholic faith and the passing of the Reform Act 1832 which resulted in a burgeoning middle class highlighted the social injustice in having Oxford and Cambridge as the only two universities in the country. Entry to either university was restricted to young men of a certain class of society. Firstly, the cost of studentship at either institution was prohibitively high so as to exclude anyone except those of the wealthy strata of society. Secondly, entrance was restricted to members of the Church of England.

It was against this background that Brougham rallied several interest groups - who by virtue of their religious demographic were excluded from Oxford and Cambridge - to support what Harte (1986) termed University of London Mark 1. Following Harte (1986:63), Brougham "brought together various interest groups excluded from the universities of Oxford and Cambridge, where it was necessary to belong to the Church of England for entrance to the one and for graduation from the other. The Jews were involved through Sir Isaac Lyon Goldsmith, the Catholics through the Duke of Norfolk, and many nonconformists' interests through people like Zachary Macaulay and F.A Cox, the wealthy Baptist minister of Hackney. In 1825-26 many meetings both public and private were arranged by Brougham, with the result that by 11 February 1826 it was possible to bring the University of London into formal existence by an elaborate Deed of Settlement".

The University of London (in Mark 1 form) began admitting students in its site at London's Bloomsbury in October 1828 amidst much religious controversy brought about by its entrance policy which imposed no religious requirement. This intention was firm and was evidenced several times in later years even when the University underwent constitutional changes. In 1835, when the government was undertaking discussion to reconstitute the University of London as a full government establishment, the Chancellor of the Exchequer, Mr Spring Rice stated: "It should always be kept in mind, that what is sought... is an equality in all respects with the ancient universities, freed from those exclusions and religious distinctions which abridge the usefulness of Oxford and of Cambridge" (Logan, 1962:10).

The absence of a religious requirement for entrance was cause of much consternation among members of the establishment, who were convinced that the University of London would be the ruin of England and referred to the university, rather unkindly, as the “godless institution of Gower Street” and, even more unkindly, termed the “Synagogue of Satan” by Edward Irving (Harte, 1986). The popular perception was that a university should properly be the place for learning and deep contemplation of, not only esoteric academic subjects but also religious philosophy. The City of London being the state capital was a place of trade and industry. It would seem that members of the establishment felt it extremely sinful and perhaps vulgar that an institution of learning would exclude religion and be situated in a place of commerce.

Despite this affront to delicate sensibilities, the University of London Mark 1 proved to be popular. The growth of the middle class in the nineteenth century provided a large population thirsty for learning and employment and in need of instruction for knowledge and skills beyond the narrow esoteric syllabus of Oxford and Cambridge. Harte (1986:67) argues that as well as extending the social appeal of university education, the important development was the extension of the syllabus of higher education. The prospectus made clear that “The course of instruction will at present consist of Languages, Mathematics, Physics, the Mental and the Moral Sciences, together with the Law of England, History and Political Economy;- and the various branches of knowledge which are the objects of Medical Education.” The teaching of English, the modern languages and the laboratory sciences, were to be notable inventions.

Success of the University of London Mark 1 was not unnoticed by members of the hitherto outraged establishment, and in 1829 a rival, known as King’s College, had been set up next to Somerset House in London by a group largely consisting of Church of England elders. This college sought not only to provide education in the same liberal arts and sciences as the original UoL, but also to contain as an essential part of the syllabus, the doctrines of the Church of England. Although termed as merely a college, this institution had one advantage over the University of London Mark I; it had been awarded a Charter. The University of London’s lack of a Charter prevented it from being able to award degrees to its students. The University of London immediately embarked upon a campaign petitioning the government for a Charter, but came up against strong opposition. Anxious to protect their monopoly and religious high ground, Oxford and Cambridge naturally opposed and found support in the London hospitals that have been providing medical teaching for centuries but had no power to grant degrees and felt that it was a presumptuous anomaly if the University was now allowed to grant medical degrees.

This debate raged for four years and in 1836 what Logan (1962) deemed a typically British compromise was reached. The UOL was established by Royal Charter in 1836 and brought together University of London Mark 1 (incorporated as University College London in the Charter) and King’s College. The compromise was as such: the Charter created a body termed as the University of London and this consisted of a governing senate that were empowered to govern the University and confer degrees and persons eminent in the liberal arts and sciences who were designated to act as examiners. The actual teaching of the students was to remain the responsibility of University College London and King’s College, and the students will be permitted to sit for the examinations conducted by the University of London after proving that they have undergone to a satisfactory level a course of study at either institution. This

arrangement was termed by Harte (1986) as University of London Mark 2 and was funded by the government. Following Logan (1962), the House of Commons was reluctant to provide this funding and subjected to great scrutiny all minutes of the Senate and its committees as well as the necessary audit information before voting to grant funding.

A.1.2 Breaking New Ground

As discussed previously, the motivation for University of London Mark 1 was the promotion of higher education regardless of religious affiliation and this policy was reiterated in the Royal Charter of 1836, where it declared: “for the advancement of Religion and Morality, and the promotion of useful knowledge, to hold forth to all classes and denominations of Our faithful subjects, without any distinction whatsoever, an encouragement for pursuing a regular and liberal course of education; and considering that many persons do prosecute or complete their studies both in the Metropolis and in other parts of Our United Kingdom, to whom it is expedient that there should be offered such facilities, and on whom it is just that there should be conferred such distinctions and awards as may incline them to persevere in their laudable pursuits”.

While this was a daring stance against the prevailing establishment order, the UOL would continue to go on to break another taboo and allow women to be admitted for examinations. In 1836 when the Royal Charter established the UOL and for some thirty years after, the expansively termed “all classes” did not, in fact, include the class of women (Harte, 1986). It may be a stretch to say that the people involved in reconstituting what would become University of London Mark 2 may not even have contemplated that women may want to be admitted to examinations and obtain awards of degrees. This is not surprising considering the prevailing attitudes towards a woman’s rightful position in society at that time and that educational facilities for females were extremely scarce, thus not providing women with neither the means nor inclination to pursue higher education.

The issue was first brought to attention of the Senate in 1856 by a Miss Jessie White who inquired as to the possibility of being admitted to examinations for a Diploma in Medicine if she were able to furnish proof of having undergone all the requisite courses of study at one of proscribed institutions (Harte, 1986). The senate rejected this request as they would another in 1862. Positive inroads were made in 1866 when the University approved the instituting of special examinations for women. Although not an award of a degree, it was acknowledged by the University that it was “not on the whole less difficult than the existing Matriculation Examination” (Harte, 1986:115).

The admission of women to standard Matriculation Examinations and the conferring of full degrees were only granted by the Senate in 1877. This was prompted by petitions from Women’s groups across the country and a statute in 1876 allowing women to be admitted to medical examining bodies. By doing so in 1877, the UOL became the first English university to award degrees to women.

Preparing for the UOL examinations was not at all easy for those pioneering women seeking to obtain degrees. Teaching institutions were not prepared to admit female students and even the limited and necessary travel involved to attend at the

examinations were viewed with suspicion as opportunities for them to be exposed to wholly unsavoury situations. They also had to balance study with the burdens of family responsibility. Harte (2986:127) records how one of the first women graduates, Mrs. Elizabeth Hills described her experience :” The wife of a professional man of limited income and the mother of children, the elder of whom with others I was engaged in teaching during the day, I had neither the time nor money for attendance at college classes, but I gladly availed myself of the first opportunity for graduation offered by the new Charter, and felt justified in devoting what leisure I had, which was chiefly after 10 pm, when the children were asleep, to the work of preparing for graduation”(*Morning Post*, 1912).

Like several of the other early female graduates, Mrs Hills obtained her degree as a result of private study instead of college attendance. This was made possible due to the unique constitution of the UOL Mark 2. As discussed earlier, the Royal Charter of 1836 established the UOL as a body responsible for governance and examining, while the actual teaching remained the responsibility of University College London and King’s College. The 1836 Charter required proof of satisfactory attendance at either institution as a requisite of admittance to the examinations. However, this requirement was removed by another Charter instituted in 1858 which allowed students who were unable to physically attend at the UOL colleges to obtain degrees if they were able to meet standards as determined by the university. The 1858 Charter provides at Clause 36 that:

“We do further will and ordain, That persons not educated in any of the said institutions connected with the said University shall be admitted as candidates for matriculation, and for any of the degrees hereby authorised to be conferred by the said University of London, other than medical degrees, on such conditions as the said Chancellor, Vice Chancellor and Fellows, by the regulations in that behalf shall from time to time determine, such regulations being subject to the provisos and restrictions herein contained”.

Inroads on dispensing with the attendance requirements at the London colleges had gradually started taking shape quite a few years prior to the 1858 Charter. Logan summarises (1962:11):”Under the Supplemental Charter of 1849... it became possible for an institution situated anywhere in the British Empire or in the territories under the Government of the East India Company to be so recognised. The Privy Council used the power to approve institutions with such lack of discrimination that, by 1858, the list included institutions as disparate as the Universities of Oxford and Cambridge, the Universities of Toronto and Sydney, the Protestant Dissenters’ College at Rotherham, Bishop Stortford Collegiate School and the Working Men’s College, London. Accordingly, the Charter of 1858 quietly dispensed with the requirement of attendance at an approved institution and thereafter the University accepted as candidates all who presented themselves for examination, providing of course that they had passed the Matriculation Examination and had paid their fees”.

A.1.3 Separation of Teaching and Examination

Clause 36 of the 1858 Charter made it possible not only for students in institutions in the Empire to sit for examinations but also allowed individual candidates from around the world to sit for them.

The groundwork for the 1858 Charter was laid by Messrs. George Grote and Henry Warburton in a report in 1857. They were proponents of the idea that UOL examinations should be open to all who met the entrance criteria. They believed that the university senate operating as an umbrella body was not able to micro manage the content and quality of teaching in individual colleges. As such, an insistence on physical attendance had no bearing on the Senate's ability to determine whether an individual candidate had received the adequate preparation to sit the examinations. The only way to determine the level of the student's knowledge is for him to undergo the examinations (Jones and Letters, 2008). Thus, they recommended that since the Senate of UOL "neither teaches, nor supervises, nor maintains discipline, nor exercises authority over students", it should confine itself to being an examining body and award degrees on successful completion of examinations regardless of the method of an individual candidate's form of preparation. Indeed, this view was reiterated by the Senate so frequently in the succeeding years, that the University was accused to making a "fetish of examinations" (Harte, 1986:137).

The 1857 report by Grote and Warburton incorporated the views of other strong proponents such as Sir Buckhill, a fellow of University College London. In his letter of support, he stated that defining a regular and liberal education only as that received "in an academy or college, or a collection of lecture rooms" was narrow mindedness (Jones and Letters, 2008). His interpretation of a regular and liberal education was "an education of all the mental faculties, by means of a wide and liberal range of study, however pursued, or however obtained. Searching and profound examinations, like that of the University of London, cannot be undergone successfully unless by men who have assimilated knowledge, and whose intellects have become vigorous by years of discipline. They render the college test superfluous".

His views echoed those of Dr. Robert Barnes, a leading member of the Committee of Graduates who organised a petition for opening up the examinations to non-collegiate candidates (Jones and Letters, 2008). Besides stating the point that an insistence on college attendance when the University was unable to maintain uniform control on the individual colleges was unfeasible, more importantly, he emphasises that acquiring knowledge through independent or distance study does not necessarily diminish the qualities and abilities of the candidate (Jones and Letters, 2008). Barnes states: "The young man, who presents himself for examination in the confidence of knowledge acquired by dint of self-denial and self-reliance, brings the strongest presumptive evidence of intellectual and moral culture... knowledge alone must be tested. There is no substitute for it. The University and the public are not concerned to inquire when or where it was obtained... unlike mere worldly stores, knowledge can hardly be acquired dishonestly, or without elevating the character of him who has achieved it".

This view, of course, was not one which was universally held. Newman (1850:137-138) strongly opined that if he "had to choose between a so-called University which dispensed with residence and tutorial superintendence, and gave its degrees to any person who passed an examination in a wide range of subjects, and a University which

had no professors or examinations at all, but merely brought together a number of young men together for three or four years... if I must determine which of the two courses was more successful in training, moulding, enlarging the mind..., I would have no hesitation in giving the preference to that University which did nothing, over that which exacted of its members an acquaintance with every science under the sun”.

Further in his lecture Newman (1850) stated that ‘we cannot be without a virtual university’ by which he recognised that ‘in every great country, the metropolis itself becomes a sort of necessary University, whether we will or no. As the chief city is the seat of the court, of high society, of politics, and of law, so as a matter of course is it the seat of letters also; and at this time, for a long term of years, London and Paris are in fact and in operation Universities” but he went on to say that “in Paris its famous University is no more, and in London a University scarcely exists except as a board of administration.”

The UOL as an examining and degree awarding body for both collegiate and non-collegiate candidates continued for the next forty years, the last twenty of which saw growing acrimony and tension between two camps. On the one hand, there were those who were extremely sceptical of the methods non collegiate students used in preparing for the examinations and argued that such methods were no substitute for the all-round character building experience provided by attendance at a college. This camp advocated that the University’s role was also to provide social education instead of merely recognising the acquisition of the technicalities of an academic subject (Jones and Letters, 2008). The two original institutions having the responsibility of residential teaching felt especially betrayed by Clause 36. University College London and King’s College argued that the 1836 Charter had clearly delineated the areas of responsibility held by the Senate and by the colleges and Clause 36 would very possibly undermine the role and contribution of the colleges.

Harte (1986:104) concludes that the University reasoned that since it “was the government and not the University which determined the institutions deemed to be affiliated to the University, and the unregulated diversity of the resulting list was evident for all to see. Some of the institutions issued the necessary certificate on terms that were virtually fraudulent, and the University had no powers of inspection or control. The incipient college system was, the Senate admitted, a mere name. Far better, they felt, to proclaim the comprehensive principle and declare free trade in education”.

The number of institutions providing teaching for UOL examinations grew to the extent that there were repeated calls for the University to evolve from a sole examination authority to a faculty led teaching university catering to resident Londoners. Any suggestion that the University take responsibility for teaching was brushed aside by the Senate citing their insistence to remain a pure examination body totally separate from exercising any teaching function, and it was this separation of functions that would later lead to the birth of what Twining (1987) referred to as “arguably London’s most important contribution to higher education: the external system”.

The ideal structure that the University of London should take was the basis for much controversy for the last twenty years of the nineteenth century. Following Harte (1986), several distinguished commentators criticised the idea that an examining body can and should remain completely separate from the responsibility of teaching. Being removed from the actual teaching, the examining body would remain anachronistic and unaware

of changes in the syllabus and the practical requirements of the students and indeed the teachers conducting the courses. A separate examining body has no knowledge or control over the positive development of the eventual graduate as a learned being in all respects, not merely the acquiring of the required academic knowledge. The call for the UOL to develop an actual teaching university grew stronger. This proposal and the associated resistance to it formed the subject of two Royal Commissions and eventually another compromise was reached.

A.1.4 The Birth of the External System

The compromise was based on the key proposal of the second Royal Commission, known as the Gresham Commission, which was published in 1894. The Gresham Commission stated: "We are of the opinion that there should be one University only in London, and not two; and that the establishment of an efficient teaching University for London will be best affected by the reconstruction of the existing University, on such a basis as will enable it, while retaining its existing powers and privileges, to carry out thoroughly and efficiently the work which may be properly required of a teaching University for London, without interfering with the discharge of those important duties which it has hitherto performed as an examining body for students presenting themselves from all parts of the British Empire".

The result of the Gresham Commission was, after several failed Bills, the passing of the University of London Act 1898 which established a commission to draw up all necessary statutes to reconstruct the UOL to fulfil the dual functions recommended. The number of failed Bills before the Act was passed showed that agreement on this issue was hard to come by. As stated in the introduction, the Convocation was crucial and many of the members of the Convocation had gained their degrees through the private route or through study at provincial and overseas colleges and wanted to defend the existing system (Jones and Letters, 2008:193). UOL had meanwhile carved out a unique role which the British government wanted to continue: namely the "mother" University of the British Empire.

The resulting statutes drawn up by the Commission empowered by the 1898 Act set out the position of the External System of the UOL which is as it can be recognised today. Logan (1962:13-14) summarises the structure of the reconstituted University : "(it) continued to examine the students without regards to the institution, if any, at which they followed courses of study; such persons were hence forth known as 'external' students. The great innovation was that the institutes of higher learning in London to which reference has already been made were brought together under the aegis of the University and given the status of 'schools of the University'; their students, when pursuing courses for a degree of the University, became 'internal' students. No institution was compelled to become a school of the University. If it cared to apply, it might obtain this status provided that it conceded certain powers to the University. These included the right to inspect and criticise the teaching facilities at the institution and the right, with the consent of the governing body, to confer the status of 'appointed teacher of the University' on the senior teachers of a school... The Act provided that that sixteen of the fifty six members of the Senate should be appointed by the faculties and the faculties were, to all intents and purposes, composed of the senior teachers of the schools of the University. In other words, the new constitution gave these teachers

the power to influence both the prescription of courses of study and the conduct of examinations. The graduates of the University were also given the right to elect sixteen members of the Senate to represent convocation. King's College and University College, which were the only schools to be directly represented on the Senate, appointed two members each and the remainder consisted of nominees of the Crown, the London County Council and certain professional bodies". Harte terms the University in this structure as University of London Mark 3 (Harte, 1986). A later Statute in 1929 provided that the other schools recognised by the University were to also be given representation on the Senate.

The internal side of the University consisted initially of twenty three schools that were admitted in 1900 and the External side was all other students who took the UOL examinations and who were not registered at the schools. The Internal side was administered by an Academic Council and the External side by the External Council. The 1898 Act also expressed in statute 122 that degrees taken by Internal and External students were equivalent.

UOL in this incarnation thrived and grew steadily until the outbreak of the Second World War which saw a sharp decrease in student numbers in the internal registrations as many citizens were engaged in military operations. However, the University saw a drastic increase on the volume of external registrations. Students who were engaged in military operations relied on the fact that they could sit for examinations in regulated centres outside of London, and saw that as a means of continuing their education. At the height of the war, the number of external students outnumbered the internal ones. After the war, another sustained growth in registration numbers was recorded and in the 1960s, it was estimated that the University of London provided roughly one fifth of all undergraduate university places in the United Kingdom (Logan, 1962).

A.1.5 The 1960s Onward: The External System, no longer relevant?

The growth of the UOL in this unique structure was not without detractors. Questions on the workability of the system started up once again in the 1960s. The Robbins Report in 1963 (223-224) depicted the problem: "Power tends to become concentrated in the centre, and the link between the central authority and the places where teaching and research are actually carried on becomes increasingly tenuous. To counter this it becomes necessary to set up a system of boards and committees that consume time and distract academic staff from their primary functions. Moreover, the intervention of the university between the basic academic unit, the college, and the national system makes for delay and inhibits decision. There are real anomalies in a system in which the vice chancellor of a newly founded university at once has access to the University Grants Committee and Principals, while heads of long established London colleges, each as large as a civic university of moderate size, have no such access or right of membership".

While the individual schools of the UOL favoured the continuation of the structure, they were critical of various aspects of it. Harte (1986) describes the primary complaint being that the academic faculties of the individual colleges were underrepresented in the Senate and were isolated from the intricacies of the decision making processes. Most importantly, the intrinsic freedom of an individual college academic faculty to

decide on syllabus and teaching material and methodology was restricted due to the insistence that all students, internal and external, be subject to a common syllabus.

Following further recommendations by another committee in 1965 chaired by Sir Owen Saunders, reforms were put in place to allow the individual colleges to have more freedom and control over their internal course syllabuses. Accordingly, "school-based degree syllabuses were approved... a new degree structure based on course units was introduced. General approval was given to these developments, and subsequently school based degrees and the course unit structure enabled much greater teaching flexibility in teaching arrangements throughout the University, replacing the previously rigid centralized system. At the same time Boards of studies were broadened to include all permanent members of academic staff in their membership rather than just the most senior ones... Schools were given more freedom to choose their own postgraduate students, programmes of study for taught Master's degrees were introduced... and the academic committee structure of the University was made more responsive to the views of both Schools and teachers" (Harte, 1986:264). The number of members in the Senate was also increased to include members nominated by the Boards of Studies. By 1980, the governance of the UOL was largely regularised and was witnessing substantial growth in its individual college constituents (Harte, 1986). One effect of this was to impact the external operations of the University. The growth of the individual colleges meant that many more students would now have the opportunity to obtain their degrees as an internal student. This was borne out in evidence when the student numbers for externally registered students dropped by about 10000 between the years of 1960 – 1985 (Harte, 1986).

Another factor which contributed to the decline of the external system during this period was the fact that from 1966, several other non-UOL colleges in London obtained status as independent universities and acquired their own degree conferring powers (several of them in the past had been preparing students for UOL examinations). This development, contrary to popular belief in the late 19th century as evidenced in the report of the Gresham Commission, did not lead to problems and confusion in London, although it did diminish the singular cohesive factor which saw the University of London through years of doubt over its right to exist. Furthermore, the establishment of the Council for National Academic Awards in 1964 delivered another blow to the external system of the University. The CNAA was empowered to validate degree courses in polytechnics and other private colleges. Thus students in those institutions who might otherwise have registered for UOL degree examinations as external students now longer needed to do so. Also, the establishment the Open University in 1969 gave students studying at a distance a comparably better resourced and much greater advertised option to the UOL external system. From its inception the Open University was greater as a force for the future, with great claims that 'it provided much more comprehensive learning and teaching structure specifically designed for distance students and delivered comprehensive material tailored accordingly' (Tight, 2005). Finally, the end of the British Empire made the University's role as the "mother" University (Namie, 1989) somewhat less relevant.

In light of the burden that the operation of the external system imposed on the University, the argument was clear to cut down on its provision following its decline in popularity. Harte summarises (1986: 271) : "It was decided in 1972 to give five years notice of the ceasing of registration of students in public educational institutions, and

that thereafter the external system should cater solely for private students...With the development of institutions of higher education throughout the Commonwealth, the overseas examination centres were reduced, and from 1977 it was decided to accept no more overseas registrations (though in 1982 it was decided to re-open overseas registrations). From the late 1960s the number of external students of the University declined sharply, but the external system still continued to meet a need and was maintained as a special feature of the University of London”.

A.1.6 The survival (evolution) of the External System

The fact that the UOL was not able or was motivated not to completely cease operation of the External system is testament to the lasting recognition and demand accorded to it. It is certainly doubtful that when the Charter of 1858 was enacted, that any of the people involved in its creation would envision the extent that it would develop to and the impact it would have on higher education throughout the world. As previously indicated UOL broke new ground by demolishing the religious, gender and class barriers to higher education. It would go on to introduce and promote higher education in regions of the United Kingdom and the rest of the world at a time where formally recognised higher education was scarcely available; yet it could not survive on that nostalgia alone.

Was it to be a historical artefact? Certainly the historical role for the external provision was now clear: in the United Kingdom, many of the current universities came into their original existence as colleges and training institutions in the nineteenth century due to the demand created by the growth of the middle classes and the rise of the professions and industry. Following Letters and Jones (2008:58): “Colleges could establish themselves in various ways: many were incorporated as non-profit making associations under civil corporation legislation which enabled them to own property. What they could not do was award degrees, since for this a royal charter was a legal requirement. Instead, they could offer to prepare students for University of London degrees as external students, and the chance to do this was particularly attractive to institutions with their own ambitions to achieve university status”. In (colonial?) situations for example both Victoria University and University of Wales, began by preparing students for University of London degrees, then achieved their own charter and went on to become federal universities based on the model of UOL. The UOL also instituted a system of special relations with – for example - colleges in Southampton, Hull, Exeter and Leicester. These colleges started by offering London degrees, but during the course of the relationship they were gradually given control of the syllabus, teaching and examinations. Following Letters and Jones (2008), the relationship with London gave these colleges (later universities) their base of structure and students on which to build when they became independent.

The 1898 Act also provided for a creation of a Board to Promote the Extension of University Teaching. The purpose of the Board was to create a scheme to introduce a variety of lectures in various areas of study for persons who do not intend to or are unable to take on full undergraduate study. These lectures would enable the students to obtain a specialised certificate or Diploma in their area of study. This scheme continues today in the external system as students can choose to take Diplomas or

individual examinations in specialised subjects in lieu of registering for a full undergraduate or post graduate degree.

At this stage was the history of the UOL to be written as if it was of a historical contribution to transnational education (in reality education of the [post] British Empire)? Again there was a clear historical record to state: outside of the United Kingdom, the external system had been a pioneer in introducing flexible and accessible higher education. After the 1858 Charter allowed for students to sit for examinations without the requirement of attendance at an affiliated institution, the first inquiry for overseas candidates was received some years later. The inquiry came from Mauritius and following discussion, the Senate approved and implemented a rudimentary system for candidates to sit for examinations outside the United Kingdom. Letters and Jones (2008:36) state that those arrangements set precedents and principals - such as the exam papers, the marking and grading all being on the same basis as those of UK examinations, the careful security measure to prevent cheating, and the independence of the local sub examiner from the college which taught and prepared the students – which were and still are in force in the University of London External System today but also by implication set standards for the operation of their own institutions. As Twining who began his academic work in an African institution that had been in a ‘special relationship’ with UOL (personal communication to research supervisor) intimated, the very ‘distance’ of the external system meant that standards of the institutions that worked with it could be maintained as the difference between teaching and examining lessened pressures (and opportunities) for duress and possible corruption. After Mauritius, similar requests and systems were put in place in Gibraltar, India, Cape Town, Nigeria, the West Indies, Canada, Australia, New Zealand, Ceylon, Hong Kong, Singapore and Malaysia. Although the list of countries bears evidence to the view of University of London as the “mother” University of the British Empire, demand for the London degrees also came from non-colonial countries. Letters and Jones (2008) state that as early as 1920, requests for examinations came in from Jerusalem, China, Baghdad, Istanbul, Thailand, Greece, United States and Egypt.

Thus, it comes as no surprise with the cachet the UOL degree commands overseas that the voice of overseas registered students were a major decision making factor when the University was cutting down on its external operations from the mid-1970s. Paul Vowles (External Registrar from 1968-1973 and Academic Registrar from 1973-1982) was determined to maintain the power of the University to offer examinations for overseas students.

For most of the historical period the research cannot call on interview data: yet at least two of the individuals still connected with the UOL external programme for laws began work in the 1960s (one, a former director of the programme – and retired for some time but very intellectually alert and keen to academically follow his subject - has completed 41 years of examining external law students!). Comparing their recollections to the ‘official picture’ opens up questions about mediation. As mentioned previously, one of the official reasons for the decline in external registrations (as stated in the academic histories of Harte and Jones) was the burden perceived by the academics that were consumed with their work in the internal system and identifying themselves with their individual school, did not see any value in their work for the external system. This perception is not in line with the recall of the two individuals whose involvement extends that far. However, the very fact that they still have some involvement with the

UOL external laws programme may indicate that they are a rather self-selecting group who imbibed a particular image of the external system. For them (see interview comments in previous chapters) marking external students papers was seen as a normal extension of their internal role (however, we may also note other views that they both were 'University men' who strove 'to make the system work').

In the account of (Letters and Jones, 2008) any perception of the external system as a drain on resources changed when in the 1980s public budget cuts affected higher education and academics became available due to cutbacks and mergers. The UOL began to explore ways in which the External system could be used to generate income by attracting more students; resulting initiatives included running short courses for external students in London and developing learning material specifically designed for distance learning.

Commitment to the External system was underscored by renewed support from the Colleges. Jones and Letters (2008:203) summarise that the "colleges now played an active role", specifically that "from 1987 a series of triennial, and then eight year (and later ten year) contracts between the University and individual colleges (or, in the case of Law, a consortium of the six London colleges with Law departments) was signed, which guaranteed academic support and provided continuity and stability for students. This established the concept of lead college, which remains a key feature of the External System today. Programme directors appointed in lead colleges became involved in all aspects of the development and delivery of the programmes, from working with academics in their colleges to develop courses and teaching materials, to giving guidance to teachers and advice to students in the institutions overseas which were increasingly involved in teaching External students, as well as promoting and publicising the programmes".

A.1.7 The Undergraduate Laws Degree in the External System

In their history Letters and Jones (2008:179) put the Law programme in a special place in that "The London LLB can trace an unbroken history back to the students who sat the University's first law examination in 1839". Indeed, shortly after the University was established by the 1836 Royal Charter, one of the very first steps taken by the new Senate was to form committees to organise the three faculties of Arts, Law and Medicine (Harte, 1986). The first examinations for Bachelor of Laws, Bachelor of Medicine and Doctor of Medicine were held in 1839 and produced a total of fourteen graduates. Today (2013), the UOL LLB and Diploma in Law counts approximately 16500 external students registered in 125 countries worldwide. Out of all the undergraduate subjects offered by the UOL External System (now International Programme), Law garners the highest number of student registrations. However, the structure of the undergraduate laws programme is unique from its counterparts in the External System.

When the Lead College system was introduced in 1987, Laws was not assigned a single Lead College. Instead in 1995, a contract was undertaken between a consortium of five colleges and the External System. The five colleges in the consortium were University College London, King's College, London School of Economics, Queen Mary College and School of Oriental and African Studies – Birkbeck College joined the

consortium in 1999 under the same terms, thus bringing the total consortium membership to six colleges.

The only document that can be drawn upon to provide a history is a report that was commissioned following the appointment of a new Director for the programme and a Quality Assurance Manager in 1999 and 2000 respectively, specifically the Douzinas report of 2001. Douzinas (2001) reports that "Under the terms of the contract signed in 1995 between the Colleges and the Committee for the External System, the Colleges agreed, via the Subject Panel in Law, to undertake the following responsibilities:

- To provide a quality assurance mechanism for the Laws programmes in the External System (currently the LLB, LLM and the Diploma in Law). The Subject Panel established a Standing Sub-Committee consisting of a representative and alternate of each of the Law Schools, the Co-Chairman of the Boards of Examiners and the Programme Director. The Subject Panel delegated its quality assurance tasks to the Standing Sub- Committee, but retained the overall constitutional responsibility for the programme.
- To appoint one academic member of the University as Course Director with responsibility for curriculum development, co-ordination of the production of study guides and the recognition process, liaison with institutions teaching aspects of the programme and formulation and revision of course regulations for the Panel's approval.'

This quote is from a report whereby the arrangement was subject to a review panel in 2001 chaired by Professor Costas Douzinas. According to Douzinas (2001), the constitutional structure of the Laws programme was formed in the mid-1990s at a time when the University of London was still mired in the long held view that it was primarily an examination assessment body. However, the turn of the century saw the acknowledgement that the External System, in an increasingly competitive higher education market, had to develop and promote a pedagogy of distance and flexible learning instead of simply providing for a set of examinations and standards for assessment. Douzinas (2001:3-4) identified the flaws of the initial structure, citing evidence from Mr. Ian Yeats (Joint Chair of the LLB Board of Examiners) and Prof. Wayne Morrison (then Director, External Laws Programme) as follows:

- The initial agreement did not create a proper and robust structure for the academic development of the programme and, as a result, academic matters were not adequately discussed
- The Standing Sub- Committee (SSC) does not have sufficient authority and has not dealt well with questions of academic development to allow the Subject Panel to entrust its decisions. The business of the SSC is often formal or its substantive background is understood only by a small group of long-standing members. This had led to a low level of participation in the SSC meetings. Thus, while the SSC became a de facto academic management committee, its increased administrative functions meant that its effectiveness was undermined. Furthermore, the absence of a direct link with the new External System: Lead Colleges Committee meant that the programme had no direct information or input into the main policy making body. This has now been remedied with the appointment of a Subject Panel representative to the ESLCC.

- The agreement entrusts the Course Director with full responsibility for curriculum development but offers no mechanism of support for this task.
- The Subject Panel has traditionally discussed the reports of the SSC at the end of its business when many of its members have left and has shown limited interest in the activities, problems and potential of the programme.

Douzinias (2001) recommended a new constitutional structure for the academic direction and development of the undergraduate External Laws Programme, but he acknowledged that greater participation from the consortium would require an increased financial incentive from the External System. Initially, the contract provided that the six colleges would receive a remuneration of GBP 65000 annually for their work in the External System. Douzinias (2001:4) accepted that this was “considered sufficient payment in the absence of a substantial contribution to the academic management of the programme and the commitment of a minimum of academic staff time to the task”. However, in light of the fact that Laws is the main profit maker in the External System, this sum may not be sufficient when reforms are implemented requiring increased contribution and effort.

Douzinias (2001:9) submitted that:” The payments made by the External System to the Schools participating in the Laws programme have been inadequate. This historical underpayment and the absence of a profit-sharing scheme between the University and the Law Schools led to the creation of a substantial capital, a large part of which has now been distributed to various Colleges and disciplines with Law receiving a small amount. The Law Schools have traditionally accepted the principle of cross-subsidy of other disciplines and degrees, but in this instance, the discrepancy between the profits made by the programme and the moneys received by the Schools and the programme itself for its development needs is so large as to create the impression of a clear injustice.

Furthermore, the participating Law Schools will be committing themselves to a robust system of academic management and quality assurance as a result of the present review. This will involve a much greater commitment of academic staff resources to the programme than hitherto and a much more active participation of Schools and academics in its running. In view of this, the Review Panel recommends that the Subject Panel should negotiate a profit-sharing scheme or some other financial arrangements that should substantially increase the income received by the participating Schools”.

Following the Review Panel in 2001, several constitutional changes were introduced in the academic control of the undergraduate External Laws Programme. The consortium model would continue and the Laws Subject Panel would still retain overall responsibility for the programme and appoint members of the Board of Examiners. The Review recommended the establishment of an appropriately constituted External Laws Committee (ELC). The members of the ELC would be appointed by, and report to, the Subject Panel in Laws. They would include” two members of the Subject Panel, as Chair and deputy Chair of the committee (for a period of three years). The Chair should be a senior academic from one of the participating Law Schools (If not already members of the Subject Panel, the Chair and deputy Chair should be co-opted for their period of tenure), the Director of the External Laws programme, the Chair and deputy Chair of the Board of Examiners and subject co-ordinators drawn from the member Colleges of the consortium” (Douzinias, 2001:7). The ELC would have full autonomy for

the overall general management of the programme within the University's academic framework and submit regular reports to the Subject Panel.

The Douzinas' Report (2001:5-6) sets out the following. The ELC would have responsibility for the academic management and development of the programme and the provision of quality assurance mechanisms, and the administration of all aspects of the operation of the programme. More specifically, the duties of the ELC would include the following:

- To develop the academic policy and direction of the External Laws programme;
- To ensure the application of agreed quality assurance framework and mechanisms;
- To deal with programme matters, including the development, management and review of programme, curriculum and regulations;
- To deal with student matters, including admissions; exemptions; suspension of regulations (progression). This will normally be through the Chairs action on recommendation from Course Director and relevant Subject co-ordinator.
- The nomination of Boards of Examiners (including Visiting Examiners), assistant examiners and assessors, for appointment by Subject Panel and formal approval by relevant Subject Area Board of the University. (N.B. The Subject Area Board formally appoints all members of Boards of Examiners for Federal and intercollegiate programmes);
- To deal with matters relating to examination and assessment;
- To deal with matters relating to learning materials;
- To deal with matters relating to teaching institutions;
- To establish sub-committees and co-opt members as required;
- To advise the Director, EISA.

The Report recommended that the ELC should establish three standing sub-committees (Examiners, Learning Materials and Institutional Support) as follows, membership of which to be drawn from the ELC. The ELC may also establish further standing or ad-hoc sub-committees after approval by the Subject Panel.

- Examinations Executive sub-committee: Its remit would be to consider ongoing principles, procedures and practices in relation to the examination process.
- Learning Materials sub-committee: Its remit would be to consider and make recommendations on learning materials including: appointment of authors and assessors of learning materials; revision of materials; additions and deletions to booklists.
- Institution Support sub-committee (teaching institutions): Its remit would be to consider and make recommendations concerning institutional support including:
 - ❖ To develop, maintain and review policy and procedures in respect of formal institutional links;
 - ❖ To consider, monitor and review institutional relationships, against agreed criteria, of organisations having, or seeking, a formal relationship with the University for the provision of tuition to External students.

- ❖ To make reports and recommendations to the University on such formal relationships;
- ❖ To advise the External Programme on matters relating to informal institutional links.

Those recommendations were implemented and the internal operations of the Undergraduate External Laws Programme provides a crucial mediating form that was examined in the research and has provided material in the preceding chapters

A.1.8 Regulating Undergraduate Laws in the External System

Unlike the individual colleges in the University of London, and other universities in the UK, the External System was not actually subordinate to much state imposed regulation until very recently. This was due to the fact that the External System was entirely self-funded and did not rely on any State funding. Formal state funding for British universities began in 1919 with the establishment of the University Grants Committee (UGC), consisting of “an unelected body of university men, appointed by the Chancellor of the Exchequer, on whose advice the Government of the day asked Parliament each year to vote money for distribution, without strings, to each university” (Maud, 1976:24).

Even on this view, provision of state money without strings or limits can never continue indefinitely (if it ever was provided) and one should note increasing urgency following the higher education boom post World War II. The increase in the number of students eligible for university education coupled with the growth of existing and development of new universities resulted in a corresponding increase in funding needs. By the late 1960s, British universities were almost entirely dependent on state funding, with student fee income only making a small percentage of incoming funds. By 1976, the UGC self-imploded and recognised that “the financial system which permitted and encouraged forward planning has been seriously damaged by successive short term decisions. As a result there is a deep and damaging sense of uncertainty which can only be removed by a restoration of a longer term planning horizon” (UGC Annual Survey for 1975-1976, 1976). The result of this was severe cuts in university funding where grants amounts were reduced or given for shorter terms.

The UGC’s admission coincided with the incoming Thatcher administration in 1979 which heralded an ideology change in the role of the State and the values governing the allocation of public funds. Brownsword (1994:529-530) states that four factors impacted the relationship between universities (law schools in particular) and state funding and governance:

First, there were the public sector efficiency savings of the early 1980s. When in the late 1980s, policy moved in favour of increasing student numbers, the expansion of the law school population was still set against the overriding need for efficiency and value for money.

Secondly, universities were encouraged to join the enterprise culture, seeking private sector funding and sponsorship, and recruiting overseas students...

Thirdly, the government's desire to target spending led to a succession of research selectivity exercises, as a result of which there is now a clear rank ordering of law schools (reflecting research performance and informing research funding).

Fourthly, the government's value for money philosophy entailed that those in receipt of public funds should be accountable and that, in line with market thinking, clients of universities (prospective students and their employers) should have hard information on which to base their decision.

As a consequence the Further and Higher Education Act 1992 was enacted along with the establishment of the Higher Education Funding Council for England (HEFCE). HEFCE is a non-departmental public body whose purpose was/is to, inter alia, distribute money to universities and colleges in England for higher education teaching, research and related activities, monitor the financial and managerial health of such universities and colleges and also to ensure that quality is upheld in universities who have received or are going to receive state funding. S70 of the 1992 Act places a duty on the HEFCE to ensure that they have adequate and efficient mechanisms to assess quality in any institution that receives or applies for public funding. Thus, university funding in England is inexorably linked to whether the university concerned is able to satisfy the HEFCE that they meet the quality standards set down. Briefly, the process is such that universities have to conduct a self-assessment exercise and make a claim as to their standards of quality against the markers laid down by the HEFCE. In 1997, the Quality Assurance Agency (QAA) was established to set quality standards for universities and colleges and conduct review as to how the standards have been met, and also to report and investigate on the confidence that can be placed on a university's management of standards and quality. If the Council is satisfied as to the assessment process and the claim of quality, then the university or the department being assessed will be judged to have met quality standards, if not, the Council will send a team to conduct a visit for further assessment.

The anxiousness of individual departments within universities to meet HEFCE quality standards have been the subject of discussion in literature of higher education in recent years. There is concern that faculty staff are increasingly being burdened by bureaucracy and "box ticking" when conducting self-assessment. Brownsword (1994) raised concerns about the negative impact of continual assessment and funding pressure on the morale of academic staff and the development of courses. Many universities incurred costs to keep up with the increased administrative work associated with meeting quality standards.

The External System of UOL was exempt from these processes due to their self-funding nature. Following the Self Evaluation Document (2006:4-5) from the External Undergraduate Laws Provision: "The ES is an entirely self-funded activity, with its income deriving principally from student fees. The EULP is the single largest of the programmes offered through the ES and its administrative and academic structure provides significant economies of scale that contribute to the accumulation of surpluses, which are fed back into the ES to facilitate further programme development. The self-funding nature of the ES has brought a particular dimension to the development of its quality assurance arrangements. Unlike HEFCE-funded provision, the ES was not the focus of the external reviews that have been a feature of UK Higher Education sector over the last ten years – indeed, the System was specifically excluded from QAA Subject Review given its non HEFCE-funded status. The impetus

for establishing transparent and robust systems of quality assurance has instead come from within the University and is driven by a commitment to ensure that provision to External students is subject to a set of checks and balances, considerations and explorations which is comparable to the corresponding elements of College-based provision.”

Notwithstanding their exemption from QAA review, the External System established a Quality Assurance Office in 1999, headed by Mrs. Rosemary Cardell. This was followed by the Academic Management and Standards Directorate in 2002, and in 2005 the External System voluntarily put itself forward for QAA Institutional Audit in 2005, that returned the finding that “broad confidence can be placed in the soundness of the University’s current and likely future management of the quality of its academic programmes and the academic standards of its awards offered through the University of London’s External System” (SED-EULP, 2006:5). This is the best verdict that can be given by the QAA auditors (Letters and Jones, 2008).

The External Undergraduate Laws Provision has also undergone changes as influenced by the move towards modernisation and quality concerns. In 1999, the first full time director for the programme, Prof. Wayne Morrison, was appointed and the Laws consortium expanded to include Birkbeck College. The 2001 Review of the EULP chaired by Douzinas identified several problems in the operation of the EULP, one of which (highlighted by Mrs. Cardell, Head of Quality Management) was that the “academic management structure was not sufficiently robust in relation to quality assurance expectations” (SED-EULP, 2006:7). The recommendations proposed by the Review Committee resulted in a new governing structure for the EULP (as discussed previously) and “provided the opportunity for reenergising the programme... enabled a change in the quality of the provision and the complexity of the issues able to be considered and acted upon by the programme” (SED-EULP, 2006:7).

Regulation of the EULP for the purposes of professional practice falls under the remit of the Bar Council and the Law Society. Admission to either body for practice as a barrister or solicitor requires a candidate to have satisfactorily completed an academic stage and a vocational stage. The Law Society and the General Council of the Bar have set out a Joint Statement listing the conditions necessary for an undergraduate law degree to satisfy the academic stage. These are:

- The institution providing the course of study satisfies the professional bodies that adequate learning resources are provided to support the course of study.
- The higher education institution awarding the degree of which the course of study is part has degree conferring powers awarded by the Privy Council.
- The standards of achievement expected of students undertaking the course of study are set at or above the minimum level of performance as set out by the QAA Benchmark Standards for Law Degrees in England, Wales in Northern Ireland.
- The course of study must include the study of legal subjects for the equivalent of at least two years out of a three or four year course of study.
- The study of foundation legal subjects must involve not less than one and a half years of study.
- The course of study will be one which satisfies the external examiners of the degree programme of which it forms part, that in addition to the Areas of

Performance set out in the Benchmark Standards, the students on that course of study should have acquired the necessary knowledge and transferable skills stated in Schedule one of the Joint Statement.

The QAA Benchmark Standards set out areas of performance which students are expected to satisfy and minimum levels of performance expected in each area. However, the QAA does not dictate the way individual universities or colleges design their courses and assessment methods or criteria of judging student performance. The QAA only requires that each student is able to show evidence of their level of performance in each area and it is up to the individual institution to ensure that their undergraduate Laws provision allows the student to do so.

The EULP has always been recognised as a Qualifying Law Degree for the purposes of satisfying the academic stage for professional practice. However, the introduction of the QAA Benchmark Standards necessitated reconsideration in several areas. Firstly, the traditional view of UOL as a pure examination assessment body had to be examined in light of the requirement that institutions have to provide an adequate amount of learning resources. Also, the requirement that students not only demonstrate ability in substantive legal knowledge but also transferable skills asked the question “whether the traditional assessment method of unseen written examination was able to detect competence in the skill areas?” As earlier stated the EULP is in a continual process of change – partly to meet the requirements of the QAA benchmark Standards and the Joint Academic Stage Boards of the Law Society and Bar Council – but that change is a process that is mediated and as observed will inform the entire research process and findings.

Appendix Two: Examination Registration Figures

The expansion of transnational legal education through the University of London's International Undergraduate Law Programme – A look at the latest student examination registration figures.

Candidate Number by Centre May / June 2013

Overseas (Non US) Centres

15	Angola	2		
18	Anguilla	3		
20	Antigua	5		
22	Argentina	12		
25	Armenia	1		
35	Australia / Brisbane	1		
41	Australia / Melbourne	10		
A1D	Australia / Perth	1	Australia	12
50	Austria / Vienna	1		
55	Bahamas / Freeport	3		
56	Bahamas / Nassau	20	Bahamas	23
60	Bahrain	3		
62	Bangladesh / Dhaka	1648		
70H	Bangladesh/Chittagong	35		
A3A	Bangladesh / Sylhet	14	Bangladesh	1697
65	Barbados	27		
72O	Belgium / Brussels	6		
72	Belize	12		
78	Bermuda	13		
91	Botswana / Gaborone	7		
97	Brazil / Sao Paulo	1		
102	British Virgin Isles	12		
104	Brunei	1		
106	Bulgaria / Sofia	1		
108	Burkina Faso	1		
132	Canada / Calgary	17		
133	Canada / Edmonton	12		
136	Canada / Halifax	4		
139	Canada / McMaster	14		
140	Canada / Winnipeg	3		
141	Canada / Montreal	7		
143	Canada / Prince Edward	2		
151	Canada / Vancouver	25		
156	Canada / Vernon	2		
161	Canada / NWT / Aurora	2		
709	Canada / Ottawa 2	6		
73K	Canada / Mississauga	42		
74B	Canada / Humber	26		
74U	Canada / Hazelton	1		
A7F	Canada / Seneca	54		
AA1	Canada / Kingston	2	Canada	219

162	Cayman Islands	7		
165	Chile / Santiago	1		
168	China / Beijing	4		
170	China / Guangzhou	1		
171	China / Shanghai	7	China	12
188	Cuba	1		
190	Cyprus	64		
192	Czech Republic / Prague	7		
71C	Denmark / Copenhagen 3	4		
200	Dominica	7		
205	Ecuador / Quito	1		
208	Egypt / Cairo	1		
A8A	Eritrea / Asmara	1		
218	Finland / Helsinki	4		
221	France / Paris BI	7		
718	France / Lyon	3	France	10
237	Germany / Berlin	6		
239	Germany / Munich	4		
240	Germany / Passau	41		
241	Germany / Cologne	3	Germany	54
250	Ghana / Accra	527		
255	Ghana / Kumasi	37		
73O	Ghana / Tamale	1	Ghana	565
257	Greece / Athens	4		
258	Greece / Thessaloniki	25	Greece	29
265	Grenada	8		
270	Guyana / Georgetown	13		
275	Hong Kong	1623	Hong Kong	1623
287	India / Bombay Mumbai	4		
288	India / Calcutta	3		
290	India / New Delhi	8		
292	India / Hyderabad	1		
74X	India / Chandigarh	1	India	17
72F	Indonesia / Jakarta II	1		
296	Iran / Tehran	1		
944	Ireland / Dublin / DTC	6		
995	Ireland / Tralee	1	Ireland	7
300	Israel / Tel Aviv	4		
306	Italy / Milan	1		
308	Italy / Rome	2	Italy	3
317	Jamaica / Kingston	425		
A88	Jamaica / Montego Bay	12	Jamaica	437
A3C	Japan / Osaka	2		
319	Japan / Tokyo	12	Japan	14

A9F	Kazakhstan / Astana	1		
334	Kenya BC / Nairobi	69	Kenya	69
72D	Latvia / Riga	1		
350	Lebanon / Beirut	2		
356	Lithuania / Vilnius	2		
362	Malawi / BC / Blantyre	6		
364	Malawi / BC / Lilongwe	5	Malawi	11
368	Malaysia / Alor Setar	4		
369	Malaysia / Ipoh	21		
370	Malaysia / Johor Bahru	94		
373	Malaysia / Kuala Lumpur	1344		
375	Malaysia / Kuala Trengganu	1		
376	Malaysia / Kuantan	4		
377	Malaysia / Melaka	9		
379	Malaysia / Penang	277		
381	Malaysia / Seremban	21		
530	Malaysia / Sabah / Kota Kinabalu	11		
536	Malaysia / Sarawak / Kuching	40		
538	Malaysia / Sarawak / Miri	1		
540	Malaysia / Sarawak / Sibul	1	Malaysia	1828
385	Maldives / Male	4		
387	Malta / Floriana	2		
392	Mauritius	337	Mauritius	337
74D	Montserrat	1		
A80	The Netherlands / Rotterdam	4		
416	New Zealand / Auckland	3		
418	New Zealand / Christchurch	2		
72A	New Zealand / Napier	1		
BC1	New Zealand / Invercargill	1	New Zealand	11
493	Nigeria / Abuja	12		
498	Nigeria / Kano	2		
499	Nigeria / Lagos	55		
502	Nigeria / Port Harcourt	8	Nigeria	77
454	Norway / Oslo 3	3		
A8B	Norway / Bergen	1	Norway	4
465	Pakistan / Islamabad	403		
466	Pakistan / Karachi	351		
467	Pakistan / Lahore	501		
74A	Pakistan / Multan	33	Pakistan	1288
487	Philippines / Manila	3		
500	Poland / Warsaw	1		
888	Poland / Krakow	1	Poland	2
515	Qatar / Doha	5		
517	Romania / Bucharest	2		

72K	Russia / Moscow	93		
AA7	Russia / St. Petersburg	1	Russia	94
70L	Rwanda / Kigali	3		
545	Saudi Arabia / Jeddah	2		
547	Saudi Arabia / Dammam	2	Saudi Arabia	4
550	Senegal / Dakar	1		
730	Serbia / Belgrade	3		
554	Seychelles / Mahe	39		
556	Sierra Leone / Freetown	31		
558	Singapore	642		
570	South Africa / Cape Town	4		
573	South Africa / Johannesburg	15		
A28	South Africa / Durban	2	South Africa	21
340	South Korea / Seoul	7		
AA9	South Sudan / Juba	2		
585	Spain / Barcelona	2		
589	Spain / Madrid	4		
594	Spain / Valencia	1		
A8E	Spain / Alicante	1	Spain	8
600	Sri Lanka	923		
606	St Kitts & Nevis	4		
607	St Lucia	12		
608	St Vincent	9		
615	Swaziland / Mbabane	1		
618	Sweden / Stockholm	3		
71B	Sweden / Gothenburg	3	Sweden	6
624	Switzerland / Zurich	5		
625	Switzerland / Berne	2		
74V	Switzerland / Geneva 4	2	Switzerland	9
630	Taiwan / Taipei	3		
632	Tanzania / Dar Es Salaam	2		
636	Thailand / Bangkok	2		
644	Trinidad/Port of Spain	594		
645	Trinidad / San Fernando	263		
647	Trinidad / Tobago	32		
74H	Trinidad / Central	476		
BD1	Trinidad / MS Prison	1	Trinidad	1366
652	Turkey / Ankara	1		
655	Turks & Caicos Islands	6		
660	Uganda / Kampala	16		
A91	Uganda / Luzira Prison	3	Uganda	19
665	Ukraine / Kiev	1		
A8F	Ukraine / Odessa	1	Ukraine	2
670	UAE / Abu Dhabi	3		

671	UAE / Dubai	27	UAE	30
705	Vietnam / Ho Chi Minh City	1		
713	Zambia / Lusaka	6		
717	Zimbabwe / Harare	5		
	OVERSEAS (NON US) TOTAL	11867		

US Centres

70A	California / San Diego / Sorrento Messa	1		
70X	California / Los Angeles / USC	1		
71F	Massachusetts / Boston	8		
745	New York / Brooklyn College	13		
80J	Texas / Houston	4		
80L	Maryland / College Park	5		
80N	California / Los Altos	5		
80S	New Jersey / Lincroft	1		
80Y	Arizona / Tempe	1		
818	Georgia / Lawrenceville	1		
81A	Pennsylvania / Pittsburgh	1		
81R	Illinois / Normal	1		
81Z	Washington / Seattle	2		
826	Oklahoma / Tulsa	1		
827	North Carolina / Fayetteville	1		
829	Illinois / Skokie	3		
82B	Georgia / Atlanta	6		
82T	California / Whittier	1		
82X	Florida / Boca Raton	5		
830	Michigan / Ann Arbor	1		
83E	Illinois / Champaign	1		
83G	California / Fresno	2		
83L	Nevada / Carson City	1		
83N	Maryland / Baltimore	4		
83Y	Texas / Austin	1		
844	Alabama / Daphne	1		
849	Florida / Bradenton	1		
84N	California / Carson	3		
84V	Nevada / Las Vegas	1		
84W	Maryland / Frederick	8		
855	New York / Kingsborough	1		
85D	Florida / Orlando / Valencia	3		
85F	California / San Bernadino	1		
85Q	New Jersey / Camden CC	2		
870	Arkansas / Bentonville	1		
872	Connecticut / Yale	3		

883	California / Los Angeles	1		
884	Texas / Arlington	1		
A03	New York / Troy / Hudson Valley CC	2		
A17	Tennessee / Chattanooga	1		
BC3	Oregon / Gresham	1		
BCB	Texas / Big Spring	1		
	US TOTAL	103		

UK Centres

74I	London / Barbican	606		
A5A, A97, A9A	London / Stewart House / Birkbeck	7	London	613
805	Bristol	5		
862	Glasgow	3		
943	Bournemouth	4		
974	Jersey	46		
976	Newtonabbey	3		
981	Manchester	16		
983	Middlesbrough	3		
999	Dundee	6		
A81	Pembroke	1	Provincial	87
	UK TOTAL	700		

Home Total 1030

	UK TOTAL	700		
	OVERSEAS AND US TOTAL	11970		
	GRAND TOTAL	12670		
	Overseas (Non US) Centres	177		
	US Centres	42		
	UK Centres	11		
	Total Number of Centres	230		
	Number of Countries	101		

Appendix Three: Examination Scripts by Individual Subjects

The challenge of ensuring robust and transparent assessment processes and of mediating timely assessment results within the constraints of high student volume and limited assessment time – A look at the latest figures of examination scripts to be assessed by individual subject.

LLB SUMMER 2013

NUMBER OF MARKED SCRIPTS BY SUBJECT AND ZONE

INCLUDING EMFSS STUDENTS' SCRIPTS

PAPER CODE	PAPER TITLE	SUBJECT TOTALS BY ZONE	TOTAL
LA1010 ZA	Criminal Law	2240	
LA1010 ZB	Criminal Law	2887	5127
LA1020 ZA	Public Law	2071	
LA1020 ZB	Public Law	2692	4763
LA1031 ZA	Common Law Reasoning and Institutions	2309	
LA1031 ZB	Common Law Reasoning and Institutions	2982	5291
LA1040 ZA	Elements of the Law of Contract	2422	
LA1040 ZB	Elements of the Law of Contract	3016	5438
LA3001 ZA	Law of Tort	1366	
LA3001 ZB	Law of Tort	1506	2872
LA3002 ZA	Law of Trusts	1419	
LA3002 ZB	Law of Trusts	1553	2972
LA3003 ZA	Land Law	1493	
LA3003 ZB	Land Law	1595	3088
LA3004 0	Civil and Criminal Procedure	165	165
LA3005 ZA	Jurisprudence and Legal Theory	632	
LA3005 ZB	Jurisprudence and Legal Theory	808	1440
LA3007 ZA	Evidence	184	
LA3007 ZB	Evidence	422	606
LA3008 ZA	Administrative Law	68	
LA3008 ZB	Administrative Law	413	481
LA3012 0	History of English Law	9	9
LA3013 ZA	Public International Law	146	
LA3013 ZB	Public International Law	23	169
LA3014 0	Conflict of Laws	226	226

LA3016 ZA	Succession	235	
LA3016 ZB	Succession	252	487
LA3017 ZA	Commercial Law	272	
LA3017 ZB	Commercial Law	633	905
LA3018 0	Labour Law	71	71
LA3019 ZA	Family Law	245	
LA3019 ZB	Family Law	274	519
LA3021 ZA	Company Law	516	
LA3021 ZB	Company Law	1038	1554
LA3024 ZA	E U Law	850	
LA3024 ZB	E U Law	548	1398
LA3025 0	Criminology	153	153
LA3026 ZA	Intellectual Property	68	
LA3026 ZB	Intellectual Property	138	206
LA3028 0	Introduction to Islamic Law	436	436
LA3029 0	International Protection of Human Rights	116	116
LA3200 0	Laws Dissertation	41	41
LA3201 0	Laws Skills Pathway One	41	41
LA3202 0	Laws Skills Pathway Two	817	817
		39391	39391

Appendix Four: Research Interview Log

A research interview log providing full details and designations of all interview subjects who have consented to sit for formal interviews. Interviewee names are provided, except where subjects have declined to provide their names on record. The reasons for such declination are not provided, neither were they sought at the time of the interview.

RESEARCH INTERVIEW LOG:

In addition to informal interaction the following formal interviews took place.

UOL ACADEMICS AND EISA PERSONNEL

Rosemary Cardell – Director of Corporate Performance and Quality

Brian Sayer – Distance Learning Advisor

Mary Luckham – Assistant Director of ULP, Examiner in Criminal Law

Beverley Brown – Assistant Director of ULP, Examiner in CLRI, Evidence

Curtiz Cotterell – Skills Tutor, Examiner in Public Law and EU Law

Wayne Morrison- Former Director of ULP, Co- Chair of Board of Examiner, Former Chief Examiner of CLRI, Deputy Chief Examiner in Jurisprudence, Chief Examiner in Criminology

James Penner – Chief Examiner in Jurisprudence, Deputy Chief Examiner in Law of Trusts

Tony Hughes – Former Director of ULP, Examiner in Elements of Law of Contract

Rob Jago – Examiner in Criminal Law, Public Law, Civil and Criminal Procedure

Ian Yeats – Co- Chair of Board of Examiners, Former Chief Examiner in Law of Torts

William Swaddling – Former Chief Examiner in Law of Trusts, Examiner in Land Law and Succession

Jenny Hamilton – Current Director of ULP

Stephen Guest – Former Examiner in Jurisprudence, evidence, Former Acting Chief Examiner in Criminal Law

Adam Gearey – Chief Examiner in CLRI, Examiner in Jurisprudence (informal conversation)

Siri Harris – Examiner in Public Law and EU Law (informal conversation)

THIRD PARTY INSTITUTIONS

Singapore – Intech Training Centre:

- Ananthi Dorai Raj – Principal, Lecturer in Criminal Law and Law of Trusts
- Patrick Jensen – Lecturer in CLRI, Family Law and EU Law
- Chang Cheek Weng – Deputy Principal, Lecturer in Law of Contract, Commercial Law, Succession, Intellectual Property Law
- Subramaniam Thirumeni – Lecturer in Public Law, Jurisprudence and Company Law

Malaysia – Kemayan ATC

- Dr Danny Choong – CEO/Principal, Lecturer in Law of Torts, Company Law
- Felix Lee Eng Boon – Former Senior Manager, Lecturer in Evidence and Company Law
- Reuben Rozario – Director of Studies, Lecturer in CLRI AND Commercial Law
- Kevin Leong – Head of HK Operations, Lecturer in CLRI and Succession (informal conversation)
- Suresh Kumar Raman – Lecturer in Public Law, Law of Contract, Company Law and Law of Torts (informal/also part of Intech Staff Re: Singapore)

Malaysia – Brickfields College

- Jothi Ram – Former Principal (deceased)

Malaysia – Winfield College (no longer in operation)

- Murali Kandasamy – Principal, Lecturer in Law of Contract, and Law of Trusts (encompassing experience at ATC, now head of Brickfields)

Bangladesh – Bhuiyan Academy

- Waliul Islam – Lecturer in Public Law, Criminal Law and Law of Torts
- Shaful Pervez – Lecturer in Law of Contract, CLRI And Law of Trusts

Bangladesh – Dhaka Centre for Law and Economics

- Fatema Anwar – Principal, Lecturer in Public Law, Administrative Law and Jurisprudence and Law of Torts

Bangladesh – London College of Legal Studies

- Asif Bin Anwar – Lecturer in Criminal Law, Law of Torts
- Khaled Chowdury – Principal

Bangladesh – British School of Law

- Andaleeve Rahman – Principal, Lecturer in Law of Contract, Public Law and Law of Torts

Jamaica – Caribbean Legal Practice Institute

- Jennifer Housen – Principal, Lecturer in CLRI, Public Law, Law of Torts, Land Law and Labour Law

Jamaica – University College of the Caribbean

- Dr Raymond Clough – Lecturer in CLRI and Criminal Law

Trinidad and Tobago – Institute of Law and Academic Studies

- Kurcelia Moore – Lecturer in CLRI and Law of Torts

Trinidad and Tobago – K Beckles and Associates

- Keith Beckles – Principal, Lecturer in Criminal Law, Evidence and Jurisprudence (informal conversation)

Trinidad and Tobago – Academy of Tertiary Studies

- Gillian Luckie – Principal, Lecturer in Criminal Law, Evidence, Law of Trusts (informal conversation)

STUDENT INTERVIEWS

Singapore – Intech Training Centre

- Munshi Ismail – Scheme B Year 3
- Anand Misra– Scheme A Part 2
- Aaron Goh – Scheme B Year 3
- Farhana – Scheme A Intermediate
- Not Named – Scheme A Intermediate
- Not Named – Scheme A Intermediate

All were part time students

Singapore – Intech Training Centre

- 4 Students: 2 from Scheme B Year 4, 1 from Scheme A Part 2, 1 from Scheme B Year 3 (All refused to have name recorded)

All were part time students

Malaysia – Kemayan ATC

- 7 Students: 3 from Scheme A part 1, 4 from Scheme A part 2 (All refused to have name recorded)

All were full time students

Malaysia – Brickfields College

- 2 Students: both LLB Intermediate (Both refused to have name recorded)

Both were full time students

Bangladesh – Newcastle Academy of law

- Hasibul Huq – Scheme A Part 2
- Kazi Mitul Mahmud – Scheme A Part 1
- Khaza Salauddin Ahmed – Diploma in Law

- Mohamad Iqbal Hossain – LLB Intermediate

All were full time students

Bangladesh – London College of Legal studies

- Insiyah Ziauddin – Scheme A Part 1
- Evanna Chaudury – Scheme A part 2

Both were full time students

Jamaica – Caribbean Legal Practice Institute

- Sharon Powell – recent LLB graduate
- Michelle Morgan – LLB Intermediate
- Michelle Phillips – Scheme A Part 2
- Karen Brooks – Scheme A Part 1

All were part time students

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